March 1, 2021

FACT SHEET
Virginia Water Protection (VWP) Individual Permit No. 19-2036
Wegmans Distribution Center, Hanover County, Virginia

DEQ has reviewed the application for the VWP Individual Permit No. 19-2036 and has determined that the project qualifies for an individual permit.

The following details the application review process and summarizes relevant information for developing the Part I - Special Conditions for permit issuance.

1. Contact Information:

Permittee Legal Name and Address:

Wegmans Food Markets, Inc.
Attn: Douglas Viets
1500 Brooks Avenue, P.O. Box 30844
Rochester, NY 14603-0844
doug.viets@wegmans.com
585-720-5777

Owner Legal Name and Address: See Section 1 of the Joint Permit Application (JPA)

Air Park Associates, L.P.
c/o Phil Dean or Bob Cox
2301 Wadebridge Road
Midlothian, VA 23113

Agent Legal Name and Address:

Timmons Group
Attn: Matt Neely
1001 Boulders Parkway, Suite 300
Richmond, VA 23225
matt.neely@timmons.com
804-200-6369

2. Processing Dates:

Received Application:	December 2, 2019
Received JPA No.:	December 2, 2019
Application Complete:	March 20, 2020
Permit Application Fee Deposited by Accounting:	February 21, 2020
Processing Deadline (120 days from Complete Application):	July 14, 2020

1st Request for Additional Information Sent:	December 16, 2019
Final Response for Additional Information Received:	March 20, 2020
Notification of JPA sent to Local Government(s):	December 9, 2019
Request for comments sent to VDH, VDGIF, VDCR, VMRC:	December 9, 2019
Letters sent to Riparian Land Owners:	December 11, 2019
Draft Permit Package Issued:	March 26, 2020
Copy of Public Notice sent to DEQ Central Office:	March 30, 2020
Copy of Public Notice sent to Local Gov't and Planning District:	March 27, 2020
Public Notice Published:	March 31, 2020
End of 30-Day Public Comment Period:	April 30, 2020
Public Hearing Public Notice Published:	June 20, 2020
End of 45-Day 1st Public Hearing Comment Period:	August 5, 2020
Received Verification of Publication:	April 13, 2020
Public Meeting or Hearing:	July 20, 2020

Due to significant comments received during the public hearing and comment periods regarding the preliminary jurisdictional determination (PJD) of Waters of the United States, which includes the state surface waters, at the proposed site issued by the U.S. Army Corps of Engineers (Corps) on February 11, 2020, DEQ sent a letter dated August 5, 2020 to the Corps requesting review of the PJD. As a result, the Corps conducted additional field work at the proposed site and issued a revised PJD on September 15, 2020. Revisions to the PJD resulted in increases in impacts to Waters of the United States, including state surface waters, from the proposed project. The applicant provided updated information to supplement the previously submitted application materials including updated impact maps and off-site alternatives analyses. As a result of the significant changes, DEQ revised the proposed permit and required a new public comment period for the revised proposed permit. Dates below document receipt and DEQ's review of the additional information.

Processing dates continued:

Request for Additional Information Sent:	August 11, 2020
Final Response for Additional Information Received:	December 22, 2020
Application Complete:	October 8, 2020
Request for comments sent to VDWR and VDCR:	September 17, 2020
2nd Permit Application Fee Deposited by Accounting:	October 16, 2020
2nd Draft Permit Package Issued:	October 15, 2020 and revisions October 16, 2020
2nd Copy of Public Hearing Notice sent to DEQ Central Office:	October 16, 2020
2nd Copy of Public Hearing Notice sent to Local Gov't and Planning District:	October 19, 2020
2nd Public Hearing Notice Published:	October 20, 2020
End of 2nd Public Hearing Comment Period:	December 4, 2020
Received Verification of Publication:	October 21, 2020
Public Meeting or Hearing:	November 19, 2020
Decision by SWCB:	February 26, 2021
Permit Issued	March 1, 2021

3. Project Location and Site Description:

The project location is proposed on a 219.6-acre site that is situated south of Ashcake Road (Route 657), northwest of Sliding Hill Road (Route 656), and east of Egypt Road (Route 741) in Hanover County, Virginia. The site is surrounded by agricultural and forest land, as well as Ashcake Road to the north, residential development and forest, as well as Sliding Hill Road to the east and south, and the Hanover County Municipal Airport and industrial/commercial development to the west. The project lies within the Pamunkey River Watershed. The proposed project location is provided in Section 3.1 of the application.

City/County: Hanover
Waterbody: Unnamed tributaries to Totopotomoy Creek, Kersey Creek, and Campbell Creek
Basin: York River
Subbasin: Pamunkey
Section: 3
Class: III
Special Standards: None
HUC: 02080106
Latitude & Longitude: 37.711605, -77.42552
U.S.G.S. Quadrangle: Yellow Tavern
State Watershed No.: YO30

The site is comprised of all or a portion of 22 separate tax parcels owned by Airpark Associates and generally consists of mid to late successional mixed pine-hardwood forest, as described in Section 3.2 of the application. The site consists of generally flat topography ranging from topographic highs of approximately 200 feet above mean sea level (AMSL) in the central portion of the site sloping downward in all directions to topographic lows of approximately 189 feet AMSL along the western site boundary.

There have been numerous wetland delineations and USACE surface water confirmations for the proposed site going back as far as 1992. An active PJD dated March 20, 2018 existed at the time that the applicant began the site selection process. During an August 28, 2019 pre-application site visit, DEQ staff determined more wetlands were potentially on site than identified on the March 20, 2018 PJD. As a result, an additional delineation was performed, and the USACE issued an updated PJD on October 30, 2019.

The PJD from the Corps dated October 30, 2019 and initially revised on February 11, 2020 indicated that the site consisted of 16.15 acres of palustrine forested (PFO) wetlands, 0.55 acre of palustrine emergent (PEM) wetlands, and 0.336 acre of palustrine scrub-shrub (PSS). A small amount of jurisdictional ditches (0.242 acre) are also onsite.

Due to significant comments received during the public hearing and comment periods regarding the PJD of surface waters at the proposed site issued by the US Army Corps of Engineers (Corps) on February 11, 2020, DEQ sent a letter dated August 5, 2020 to the Corps requesting review of the PJD. As a result, the Corps conducted additional field work at the proposed site and issued a revised PJD on

September 15, 2020. Furthermore, an additional PJD for areas associated with offsite road improvements and utility tie-ins was requested by the applicant on September 21, 2020 and confirmed by the Corps on September 24, 2020. Based on the revised PJD information for the site from the Corps dated September 15, 2020 and September 24, 2020, the site consists of 28.708 acres of palustrine forested (PFO) wetlands, 0.585 acre of palustrine emergent (PEM) wetlands, and 0.336 acre of palustrine scrub-shrub (PSS). A small amount of jurisdictional ditches (0.248 acre) are also onsite. Wetlands within the project area persist in the natural depressions within the forested areas and alongside the large drainage system that bisects the southern portion of the site. No stream channels were delineated on site. Additional information about the surface water impacts located within the project area is located below in Section 7.

4. Application and Proposed Impacts

The applicant is requesting a permit for the total impact to 14.85 acres of surface waters, consisting of the following.

- Permanent fill impacts are to 12.99 acres of palustrine forested (PFO) wetland, 0.23 acre of palustrine emergent (PEM) wetland, and 0.14 acre of jurisdictional ditch.
- Secondary impacts, due to diversion of surface water, are to 1.44 acres of palustrine forested wetland and 0.02 acre of jurisdictional ditch.
- Temporary impacts are to 0.03 acre of palustrine emergent wetland.

The application for this project consists of the Joint Permit Application (JPA) received on December 2, 2019, additional information submitted by the applicant on December 13, 2019, December 20, 2019, December 23, 2019, February 21, 2019, March 12, 2020, March 16, 2020 and March 20, 2020 including all associated appendices, and all other information submitted by the applicant to DEQ. Additionally, revised project information was submitted by the applicant on September 15, 2020, September 22, 2020, September 28, 2020, October 7, 2020, October 8, 2020, and December 22, 2020 including all associated appendices. All submitted information will be hereto referred to as the "application". The original application received on December 2, 2019 was submitted on behalf of Hanover Economic Development for Project Tiger. Since that time, the applicant information has been updated to Wegmans Food Markets, Inc.

5. Project Purpose and Need:

As described in Section 4.0 of the application, the purpose of the project is to "provide a site that will serve as a secure regional grocery distribution center that will (a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region." The applicant states that the project is needed to develop a new regional distribution center that can serve current and planned stores in the mid-Atlantic region in a "logistically responsible and cost-efficient manner."

As described in Section 5.1 of the application, the proposed facility components include three phases of development on site. Phase I construction of an approximately 1.1 million contiguous square feet (sq. ft) facility that will house a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for

tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and site security). Appurtenant facilities, such as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. returning trailer cleanout and site security) are necessary for operations. A near future Phase II expansion to approximately 1.3 million square feet includes expansion of the dry warehouse and the temperature controlled warehouse. Phase III - future development/expansion of the distribution center will be constructed in accordance with county zoning which allows for a maximum buildout of 1.7 million square feet.

The applicant currently operates two Northeast distribution centers located in Pottsville, Pennsylvania and Rochester, New York. A typical regional distribution center can efficiently serve 45-50 retail locations. The desired goal as stated by the applicant is for each distribution center to serve 45 stores. Currently, the Pottsville Distribution Center is serving 54 stores in the following locations: Pennsylvania (28), New Jersey (9), Massachusetts (6), Maryland (8), Virginia (12), and North Carolina (1), and is operating at 20% overcapacity. The Rochester Distribution Center serves 47 stores within New York and is operating at 4% overcapacity. Section 2.0 of the application includes an explanation that when a regional distribution facility nears 90% capacity, the facility may not be able to meet store growth or unexpected fluctuations in demand. Exceeding 95% facility capacity is not ideal because free space is needed to accommodate item changes and maintain efficient day-to-day operations. At 100% capacity, a facility would result in gridlock with no room to receive supplier deliveries.

Following current trends, Wegmans predicts that they will outgrow the existing Pottsville Distribution Center within the next five years. As depicted on the Wegmans "Here we grow" figure provided on March 16, 2020, five new stores are planned to open in North Carolina as well as six stores in the D.C. metro area within the next five years. The applicant predicts that with the current distribution centers, they will not be able to serve the increased retail locations; therefore, a new regional distribution center is needed that can efficiently supply the anticipated number of retail locations in the rapidly growing mid-Atlantic market.

In addition to relieving demand on the existing distribution centers, the proposed Hanover County Distribution Center would also serve to decrease distance, time, and costs associated with transportation to retail stores in the Mid-Atlantic region. The Pottsville distribution center currently serving these areas is approximately 370 road miles from the Virginia Beach location and approximately 480 road miles from the planned West Cary, North Carolina location. The distance from Hanover County, VA to Raleigh, NC is approximately 187 miles. A Hanover County Distribution Center would reduce trip miles to the North Carolina store locations by more than 290 miles one way. Reduced distance from a distribution center to a retail store results in a significant reduction in fuel and operational costs associated with each trip. Deliveries for perishable items are often scheduled daily to ensure the highest quality and longest shelf life. Long-distance deliveries can require longer lead times, which can result in unpredictable impacts from weather, shorter shelf life of perishable products, and the potential for increase of damage to sensitive products and loss of product. Servicing northern Virginia stores from the Hanover Distribution Center also reduces the number of trips, trucks originating from the Pottsville Distribution Center need to make through one of the most heavily congested areas of traffic in the nation, the Washington D.C. metro area.

Based on information provided by the applicant regarding lack of adequate capacity at the existing distribution center to accommodate several existing and planned retail locations in the D.C. metro area,

Virginia, and North Carolina, and proximity of the current distribution center from these locations, staff has concluded that the applicant has sufficiently demonstrated the need to construct an additional distribution center.

6. Avoidance and Minimization Efforts:

9VAC25-210-60 B.1.g of the Virginia Water Protection Permit Program Regulation requires that applications include "an alternatives analysis for a proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the "Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230." Section (a) of 40 CFR Part 230 Subpart B, known as the Clean Water Act Section 404(b)(1) Guidelines, states that "no discharge of dredged or fill material shall be permitted if there is a *practicable* alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." An alternative is considered *practicable* if it is "available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes."

The application provided documentation demonstrating the evaluation of several alternatives to the proposed project including a no-build alternative, four off-site alternatives, as well as layouts of the distribution center at the preferred location.

6.1 Off-Site Alternatives

The application explains that the applicant considered approximately a dozen locations in Virginia and North Carolina. The Richmond metro area was determined by the applicant to be the center of the retail distribution needs. The applicant specifically identified Hanover County as the location for a new regional distribution facility that best serves the needs of the existing and planned retail stores and determined that Hanover County, Virginia increases logistical efficiency due to the ease of access to I-95, allowing the center to not only serve stores in NC and southern Virginia, but also providing a better source of distribution for stores located in northern Virginia (Fredericksburg, Potomac, Alexandria, Lake Manassas, Chantilly, Fairfax, etc.) and the D.C. metro area. Servicing Northern Virginia stores from the Hanover distribution center also reduces the number of trips, trucks originating from the Pottsville Center need to make through one of the most heavily congested areas of traffic in the nation, the DC Metro Area. This helps reduce the risks associated with perishable food items, while enhancing safety by decreasing road hours for operators. Upon commencement of operations, the Hanover Distribution Center would immediately begin serving 24 stores in the D.C. metro area, Virginia, and North Carolina.

According to the applicant, the Metro Richmond area does not provide the same ease of access to the portions of I-95 that facilitate the logistics train to the Northern Virginia stores. The application proposes five build alternatives in Hanover and the Town of Ashland for development as a regional distribution facility, referred to as Alternatives 1, 2, 3, 4, and preferred (also known as the Air Park site) as most supporting of the project purpose and documents an off-site alternative analysis of these sites. The applicant also analyzed a No Action alternative. A detailed Alternative Analysis, describing how the applicant evaluated and eliminated alternatives, can be found in Section 5.0 of the JPA package dated November 2019 and additional information provided through October 8, 2020. The initial application included consideration of a No Action alternative and an evaluation of two (2) alternative sites, referred to

as Alternatives 1 and 2. The applicant provided alternatives analysis for sites referred to as Alternatives 3 and 4 in response to a request by DEQ to provide additional off-site alternative analyses in order for staff to determine if the proposed site meets the Least Environmentally Damaging Practicable Alternative (LEDPA).

Screening factors that were analyzed by the applicant in the offsite analysis include:

1. Primary site access within 3 road miles of Interstate 95;
2. Must efficiently serve current and future grocery stores in the Region;
3. Minimized wetland/stream impact[a] and mitigation costs;
4. Can accommodate at least 130 acres of correctly configured construction pad[b],
5. No potential stream impacts;
6. No potential of RPA impacts;
7. Availability of viable alternate routes (in the event of disruption of the primary route);
8. Properly zoned;
9. Access to connector/dissipater roads without need for improvement;
10. Sufficient labor force;
11. Avoids routing through congested areas to reach primary roads;
12. Ease of utility access (sewer, power, water);
13. No potential threatened and endangered species conflict; and
14. Sufficient amount of mitigation credits in the service area.

[a] The application states that a wetland delineation and perennial stream assessment/resource protection area determination was not available or feasible to be performed for all sites evaluated during the alternatives analysis; therefore, the aquatic resources for Alternative Sites 1, 2, and 4 were approximated based on National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) mapping. A surface water delineation was used for evaluation of surface water impacts on Alternative 3 and the preferred site.

[b] The application states that in designing the Hanover Distribution Center campus, the best design and operational practices from previous and existing facilities were incorporated including cross docking and flow through product handling as described below.

The proposed distribution center layout facilitates the "Flow Through" of product, which allows the movement of product through the warehouse without ever having to go into storage resulting in (a) a smaller warehouse footprint due to limiting the amount of product being stored in the warehouse. (In many cases this could be more than 40% of meat and produce); (b) decreased handling of product; and (c) increased freshness to the customer.

The proposed layout also includes retail cross docking. Retail cross docking receives items from different suppliers and classify them into departing trucks for various destinations. A figure provided on March 12, 2020 indicates a schematic portrait of cross docking for various items that depart from a facility for separate destinations. By properly implementing operational practices such as cross docking, many benefits can be brought about for organizations including, decreased storage cost, reduced fix price of the storage area, reduced shipment lead time, and increased customer satisfaction via fast delivery.

To implement cross docking and flow through, the application explains that a L-shaped campus is needed to allow for maximized efficiency in day to day operations, which in the long-term, will provide an

increased profit margin, while also reducing required building footprints by eliminating the need for redundant spaces. The applicant states that a different layout would result in a less efficient operation as well as require a larger building footprint.

The applicant also states that an L-shaped campus allows:

> (a) The employee parking and administrative areas to be positioned centrally to the dry and perishable buildings which enables a common entry point, shared employee areas, a common area for equipment parking, maintenance and offices. Other layouts result in having to duplicate several of these areas to cut down on the distance employees would need to travel;
> (b) Employee parking and truck traffic are kept apart;
> (c) The ability for a common outbound trucking operation that is shared for both buildings in terms of tractor and trailer parking, trailer stripping, and other common requirements. Moving trailers throughout the site requires less miles and less fuel because of the L-Shaped common shared trucking concourse as compared to an "in-line" design; and
> (d) Greater ability to expand each building in the future if this should ever be a requirement.

The applicant determined the Air Park site the preferred site due to a combination of factors including: proximity to I-95, logistical efficient to serve current and future stores, ecological factors, mitigation cost and credit availability, zoning, access (required offsite road improvements, avoidance of congested areas), ease of utility access, and cost.

6.2 Alternatives of 1, 2, 3, 4, and No Action

Staff closely reviewed the application to evaluate whether the application demonstrated that the applicant's proposed site meets LEDPA, satisfying the requirements of 9VAC25-210-80, taking into account cost, existing technology, and logistics in light of overall project purposes. Each of the five build alternatives and the no-build alternative presented in the application were evaluated under the following criteria:

1. Meeting the *Project Purpose and Need*
2. *Surface Water Impacts*
3. Practicable after taking into consideration *Costs*
4. Practicable after taking into consideration *Logistics*
5. Practicable after taking into consideration *Technology*

An alternative is considered *practicable* if it is "available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes."

Purpose and Need

The project purpose as stated in the application is "to provide a site that will serve as a secure regional grocery distribution center that will "(a) serve existing retail locations, (b) relieve transportation burdens from existing supply centers, and (c) provide a base of support to serve future retail locations in the mid-Atlantic region." The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner." More details about the purpose and need are summarized in Section 5 above.

Surface Water Impacts
Surface water impacts are evaluated based on the surface water features and activities that require a VWP Permit in accordance with 9 VAC 25-210-10 et seq. This evaluation does not include activities or features outside the authority of the VWP Program. Because not every site has a Jurisdictional Determination from the Corps, nor is it not practical for an applicant to conduct a surface water delineation for all alternatives, DEQ staff confirmed the accuracy of the information provided by the applicant from National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) mapping to determine if the applicant's assumptions in approximating the aquatic resources for Alternative Sites 1, 2, and 4 were reasonable. A confirmed Jurisdictional Determination from the US Army Corps of Engineers was used for evaluation of surface water impacts on Alternative 3 and the preferred site.

Cost
Cost is evaluated on the premise of what is a reasonable expense for this type of construction project, whether the project cost is substantially greater than the costs normally associated with the particular type of project under consideration, and if an alternative is unreasonably expensive to the applicant, the alternative is not practicable.

Logistics
Logistics of each alternative is evaluated based on the ability to successfully complete the project when taking into consideration timing, constructability, land acquisition, project constraints, and safety hazardous.

Technology
Technology is evaluated by considering whether the technology is currently available to implement each of the alternatives.

Based upon staff's review of the application, the preferred site, although having more wetland impacts than other alternatives evaluated in the application, represents the LEDPA as it is the only practicable alternative when considering cost, logistics, and technology in light of the project purpose. A summary of the details considered in this evaluation is provided in the section below, and additional details can be reviewed in the VWP Permit file 19-2036.

6.3 Alternative 1 (Flippo Site)
Alternative 1 is located southwest of the intersection of Interstate 95 and Kings Dominion Highway (Route 30) and is approximately 250 acres in area. The property is bisected by Route 1, and the evaluated alternative is on the eastern portion of the property and consists of a managed pine plantation. Alternative 1 is zoned as A-1 (agricultural), and site rezoning or a conditional use permit would be needed to construct the project at the site. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. As included in the application, a sanitary trunk sewer extension along Little River and boring under I-95 for a sanitary main extension would be necessary in order to develop this site.

6.3.1 Purpose
The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner" and that Alternative 1 meets the purpose as provided in the application.

6.3.2 Surface Water Impacts
The application states that approximately 15 acres of jurisdictional wetlands would be permanently impacted as a result of project implementation at Alternative 1 making the surface water impacts at Alternative 1 comparable to the preferred site. Therefore, surface water impacts were not a significant factor in evaluating the applicant's proposed LEDPA. Additionally, the applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site. Results indicated that the dwarf wedgemussel and the Atlantic sturgeon have been confirmed within 2 miles of Alternative 1.

6.3.3 Cost
The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. The application also stated that Alternative 1 would require the use of unclassified rural collector roads SR-602 (Mt. Hope Church Road), SR-689 (Taylorsville Road), and Short Cut Road in order to access Route 1 and Route 30 before the Route 30/I-95 interchange. These roads would require significant and costly improvements in order to withstand prolonged tractor trailer use. Due to its current use as pine plantation this alternative would likely require a minimum of 130+ acres of tree clearing and the construction of sewer, waterline, and electricity infrastructure to the interior of the site, further adding to overall project costs and increased project timeline. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated at Alternative 1 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, a sanitary trunk sewer extension along Little River, and the boring of a sanitary main extension beneath I-95. The applicant also incorporated a $1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost to prepare Alternative 1 for development is estimated to be $5.4 million. This cost does not include the construction costs of the distribution center itself. The cost to construct the proposed project at Alternative 1 is approximately 90 percent of the costs to construct at the preferred site.

6.3.4 Logistics
The applicant states that while site access and road infrastructure improvements are sub-par, size and the proximity to Interstate 95 make Alternative 1 a viable option. However, the potential exists for increased congestion and reduced traffic safety when accessing the interstate, as the site is near the Kings Dominion theme park and would likely utilize the same access junction to I-95 as patrons and employees entering/exiting the park via Route 30. The applicant did not identify any logistical challenges associated with construction of the distribution center associated with Alternative 1. Alternative 1 is practicable in terms of logistics.

6.3.5 Technology
The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 1. Alternative 1 is practicable in terms of technology.

6.4 Alternative 2 (Blenheim Site)
Alternative 2 is located off of Hickory Hill Road east of Interstate 95 and Ashland, Virginia. Most of the site consists of mixed pine hardwood forest, as well as clear cut land. The site consists of one parcel totaling approximately 506 acres and is zoned as A-1 (agricultural), and as such a conditional use permit or rezoning proffer would be needed. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. A sanitary sewer pump station and force main would be necessary in order to develop this site. Additionally, boring under I-95 would be necessary for the extension of a force main and water main. The applicant has also determined that an extension of a water main along Hickory Hill Road and significant road improvements at Ellet's Crossing is necessary to develop this site.

6.4.1 Purpose
The applicant has explained that a new regional distribution center is needed in Hanover County to "serve current and planned stores in the mid-Atlantic region in a logistically responsible and cost-efficient manner" and that Alternative 2 meets the purpose as stated in the application.

6.4.2 Surface Water Impacts
The application states that construction of the project at Alternative 2 would impact approximately 16.4 acres of wetlands and 2,366 linear feet of stream. The applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site. Results indicated that the dwarf wedgemussel and the Atlantic sturgeon have been confirmed within 2 miles of Alternative 2.

6.4.3 Cost
The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 2 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, sanitary pump station and force main, the boring of a force main extension beneath I-95, road improvements to Ellet's Crossing and Hickory Hill Road, 12" water main extension along Hickory Hill Rd, and water main extension boring beneath I-95. The applicant also incorporated a $1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 2 would cost $29.5 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost $6.23 million, construction of the project at Alternative 2 is estimated to be 4.7 times the cost of constructing at the preferred site. The applicant concludes that this alternative is not practicable considering cost.

6.4.4 Logistics

The application explains that construction at Alternative 2 presents some logistical challenges. Perennial streams throughout site results in approximately 9.6 acres within the Resource Protection Area regulated and protected by the Chesapeake Bay Preservation Act which cannot be developed without local government approval which may not be granted. Additionally, Alternative 2 is bisected by an overhead electrical easement. The distribution facility has been designed in an "L-shaped" layout as described above. In order to utilize "L-shaped" design on Alternative 2, the layout would have to be placed on either side of a set of power lines and their associated easement that bisects the property. According to the applicant it is not feasible to redirect, develop permanent structures within, or otherwise alter the utility easement. Additionally, the facility cannot be separated or disconnected in order to be located on opposite sides of the power lines. Separating the facility would decrease productivity and operational efficiency while requiring an increased area of disturbance due to additional and duplicated infrastructure (i.e. roadways, parking, stormwater, etc.) facilities. The required components of the distribution center cannot be located east of the power lines without intruding into the utility easement (roads, security fencing, parking, stormwater infrastructure, etc.), extending offsite, or both. The applicant concludes that because of these challenges, Alternative 2 is not practicable in terms of logistics to construct the proposed project on this site.

6.4.5 Technology

The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 2 in comparison to the preferred site. Alternative 2 is practicable in terms of technology.

6.5 Alternative 3 (Archie Cannon Site)

Alternative 3 is in the Town of Ashland west of I-95. Most of the site consists of mixed hardwood-pine forest and agricultural land. The site consists of 3 parcels totaling approximately 297 acres zoned M-1. The construction of sewer, waterline, and electricity infrastructure to the interior of the site would be necessary as well as off-site road improvements. The applicant has determined that a new traffic signal at the intersection of Archie Cannon Drive and Route 1 and, and relocation of sanitary sewer would be necessary.

6.5.1 Purpose

The application states that because Alternative 3 is a long and relatively narrow site, the required distribution center configuration would span the entire width of the property and making onsite alternatives limited to the inability to rotate or shift planned site design. Limitation in orientation and size prohibits the applicant from meeting their future expansion goals, failing to meet their Purpose and Need.

6.5.2 Surface Water Impacts

The application states that construction of the project at Alternative 3 not including stormwater management facilities would impact approximately 0.5 acre of wetland and 1,953 linear feet of stream. Potential surface water impacts were determined based on an existing surface water delineation available to the applicant. The applicant conducted a preliminary review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources databases for threatened and endangered species at the site.

Results indicated that the dwarf wedgemussel and yellow lance have been confirmed within 2 miles of Alternative 3.

6.5.3 Cost
The applicant provided information associated with cost purchasing the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 3 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, signalization of Archie Cannon Drive, and sanitary sewer relocation. The applicant also incorporated a $1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 3 would cost $9.7 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost $6.23 million, construction of the project at Alternative 3 is estimated to be 1.6 times the cost of constructing the project at the preferred site. The applicant concludes that this alternative is not practicable considering cost.

6.5.4 Logistics
The applicant explains that because of the following reasons Alternative 3 presents logistical challenges and was determined to not be practicable:

- The site is situated within 3 road miles of an interchange to I-95, however accessing the site from the closest interchange (I-95/Route 54) would require tractor trailers being routed through the Town of Ashland, which creates significant congestion and public safety concerns. The next closest interchange is approximately 6 miles to the north (I-95/Route 30). However, the potential exists for increased congestion and reduced traffic safety when accessing the interstate from that location, as it is the primary interchange for the Kings Dominion theme park. *DEQ notes that this logistical challenge may not be unique to Alternative 3.*

- John M. Gandy Elementary School is adjacent to the site, just to the south of Archie Cannon Drive. This location would effectively require distribution center trucks to share the same roads with school traffic (buses and personal vehicles daily), creating further public safety risks. *DEQ notes that this logistical challenge may not be unique to Alternative 3.*

- Alternative 3 does not allow for the future expansion of the distribution center as depicted on the preferred alternative. Because of this the Applicant will not be able to achieve their future goals for the project.

- The town of Ashland will no longer allow this location to be used as a distribution center and trying to re-zone this location is not practicable due to the applicant's timeline. Rezoning efforts would be both timely and costly to the Applicant with no guarantees that the rezoning could be accomplished, making the Air Park site a much more appealing location as it is already properly zoned. Additionally, the recent zoning ordinance changes by the town of Ashland make the proposed distribution center use incompatible with the current zoning designation with no likelihood of changing.

6.5.5 Technology
The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 3. Alternative 3 is practicable in terms of technology.

6.6 Alternative 4 (Graymont Site)
Alternative 4 is located off a rural minor collector road west of I-95 in Hanover County. Most of the site consists of mixed hardwood-pine forest, agriculture, and a single residence. The site is comprised of 2 tax parcels totaling approximately 197 acres and is zoned M-1. The applicant has determined that because of the site topography a retaining wall must be constructed for the site to be developable. Additionally, the applicant has determined that a sanitary sewer pump station and force main as well as significant improvements at Ellet's Crossing is necessary to construct at this site.

6.6.1 Purpose
The application states that because Alternative 4 offers an extremely tight fit at best with regards to the distribution center layout and would not allow for further expansion of the distribution center as depicted on the preferred alternative. Because of this the applicant will not be able to achieve their future goals for the project and fails to meet their Purpose and Need.

6.6.2 Surface Water Impacts
The application states that construction of the project at Alternative 4 (minus stormwater facilities) would impact approximately 1.1 acres of wetland and 689 linear feet of stream. Potential surface water impacts were determined based on an existing surface water delineation available to the applicant. Review of the US Fish and Wildlife Service, Virginia Department of Conservation and Recreation, and Virginia Department of Wildlife Resources database indicated the potential for the federally endangered Dwarf Wedgemussel (*Alasmidonta heterodon)* and federally threatened Yellow Lance (*Elliptio lanceolata).* The applicant hired Three Oaks Engineering to conduct a mussel survey within the South Anna River at Alternative 4. The study concluded that "While high quality habitat is present in the South Anna River, and there is potential for additional species not found during these efforts to occur there, the target federally listed species were not found during these efforts."

6.6.3 Cost
The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost. DEQ requested additional information associated with these costs in order to assess if the cost to construct a distribution center associated with Alternative 4 was practicable. The applicant provided an explanation of site improvements necessary and associated cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, sanitary sewer and pump station, a site retaining wall, and road improvements to Ellet's Crossing. The applicant also incorporated a $1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost analysis concludes that Alternative 4 would cost $13.8 million. This cost does not include the construction costs of the distribution center itself. As the preferred site is projected to cost $6.23 million, construction of the project at Alternative 4 is estimated to be 2.2 times the cost

of constructing at the preferred site. The applicant concludes that this alternative is not practicable.

6.6.4 Logistics
The applicant explains that because of the following reasons Alternative 4 presents logistical challenges:

- The primary site access would likely be routed to the Route 30/I-95 interchange, approximately 4 miles to the north. Secondary access would be routed approximately 4 miles south through the Town of Ashland. Both routes are further from I-95 interchanges than desired and require trucks to spend more time in frequently congested areas. Additionally, a rural minor collector road and an unclassified rural local road would require costly road improvements as explained in the cost analysis section.

- Alternative 4 offers an extremely tight fit with regards to the distribution center layout and would not allow for further expansion of the distribution center as depicted on the preferred alternative. Because of this the Applicant will not be able to achieve their future goals for the project.

6.6.5 Technology
The applicant did not identify any technological challenges associated with construction of the distribution center associated with Alternative 4. Alternative 4 is practicable in terms of technology.

Alternative Site Construction Cost Estimates Provided by the Applicant

Updated Estimated Cost Analysis (12/21/2020)

Site	Flippo	Blenheim	Archie Cannon	Graymont	Air Park
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres
Estimated Development Cost					
Mitigation Cost (based on $35,000/wetland cr. and $300/stream cr.)	$ 1,050,000.00	$ 1,857,800.00	$ 620,900.00	$ 283,700.00	$ 1,029,350.00
Assessed Value	$ 2,005,100.00	$ 1,865,700.00	$ 9,326,600.00	$ 1,993,000.00	$ 4,406,000.00
Signalization of Archie Cannon Dr/RT	$ -	$ -	$ 500,000.00	$ -	$ -
Sanitary sewer relocation	$ -	$ -	$ 750,000.00	$ -	$ -
Sanitary Pump Station and FM	$ -	$ 1,800,000.00	$ -	$ 1,500,000.00	$ -
Site Retaining Wall	$ -	$ -	$ -	$ 2,800,000.00	$ -
Sliding Hill Road Improvements (curve softening)	$ -	$ -	$ -	$ -	$ 500,000.00
New Turn and Acceleration Lane Sliding Hil Road	$ -	$ -	$ -	$ -	$ 290,000.00
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ $200LF)	$ 2,800,000.00	$ -	$ -	$ -	$ -
I-95 Bore for Force Main Extension (700LF @$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
I-95 Bore for Sanitary Main Extension (700LF @$750/LF)	$ 525,000.00	$ -	$ -	$ -	$ -
Ellet's Crossing and Hickory Hill Road Improvements (Blenheim-~9,500 LF @ $2,500LF)(Graymont ~3,500LF @ $2,500)	$ -	$ 23,750,000.00	$ -	$ 8,750,000.00	$ -
12" Water Main Extension Along Hickory Hill Road (6,700 LF @$150/LF)	$ -	$ 1,005,000.00	$ -	$ -	$ -
I-95 Bore for Water Main Extension (700LF@$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
Offsite Easement Acquisition (8,300LF @ $60/LF)	$ 498,000.00	$ -	$ -	$ -	$ -
County Infrastructure Incentive $1.5M	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)
Brown Grove Regional Trunk Sewer	$ -	$ -		$ -	$ 1,500,000.00
Est.Cost Total:	$ 5,378,100.00	$ 29,478,500.00	$ 9,697,500.00	$ 13,826,700.00	$ 6,225,350.00
Difference:	$ (847,250.00)	$ 23,253,150.00	$ 3,472,150.00	$ 7,601,350.00	
Order of magnitude expense to preferred site	0.9	4.7	1.6	2.2	

6.7 No Action

The No Action alternative would not impact any surface waters, would not encounter any logistical or technological issues associated with construction, and would not impose any construction costs. The No Action alternative is not consistent with the applicant's purpose and need of the project to serve existing retail locations, relieve transportation burdens from existing supply centers, and provide a base of support

to serve future retail locations in the mid-Atlantic region. The application included an evaluation of delaying investment in a new facility through revisions to Standard Operating Procedures (SOP) changes and expanding utilization of the existing facilities. However, the applicant determined that the Pottsville Distribution Center constraints would require expansion of the existing facility to meet new retail store demands. Since mid-Atlantic growth is expected to continue, expanding this facility would result in increased transportation costs of supplying stores in the mid-Atlantic Region. In addition, store service and product quality would be at risk due to the long distances and transportation costs associated with expanding stores to the south that would exceed all other alternatives evaluated. The No Action alternative is not considered practicable because it does not meet the purpose and need of the project.

6.8 Preferred Site (Air Park Site)

The approximately 219.6-acre site is in Hanover County southwest of the intersection of Ashcake Road and Sliding Hill Road. The site is surrounded by agricultural and forest land, as well as Ashcake Road to the north, residential development and forest, as well as Sliding Hill Road to the east and south, and the Hanover County Municipal Airport and industrial/commercial development to the West. In order for the distribution center to most efficiently serve both current and future retail stores in the Mid-Atlantic Region, the applicant determined the project must be located in Hanover County within close proximity to I-95 to facilitate the logistics train to Northern Virginia stores.

6.8.1 Project Purpose

The application explains that the preferred site and Least Environmentally Damaging Practicable Alterative is consistent with the project purpose and also allows for future expansion of the site.

6.8.2 Surface Water Impacts

The application states that the preferred site and Least Environmentally Damaging Practicable Alterative will permanently impact 14.82 acres of surface waters and temporarily impact 0.03 acre of surface waters.

6.8.3 Cost

The applicant provided information associated with cost to purchase the land and estimated mitigation credit cost at the preferred site and Least Environmentally Damaging Practicable Alterative. DEQ requested additional information associated with these costs in order to assess the construction cost of the preferred site compared to Alternatives 1, 2, 3, and 4. The applicant provided cost estimates based on the total assessed value of the property, anticipated mitigation costs associated with surface water impacts, the required Sliding Hill Road improvements (curve softening) and a new turn lane and an acceleration lane on Sliding Hill Road. The applicant also incorporated a $1.5 million incentive into the cost analysis being offered to the applicant to offset infrastructure improvement cost at any site. The cost to construct the project at the preferred site is approximately 78% less than Alternative 2, 35% less than Alternative 3 and 55% less than Alternative 4.

The cost to construct the project at Alternative 1 is estimated to be approximately 90 percent of the costs to construct at the preferred site. The applicant explained that Alternative 1 requires rezoning and acquisition of offsite easements and states that “the time required to acquire the property, conduct thorough due diligence, rezone (if possible), and acquire the necessary offsite

easements (if possible), represents a greater risk and expense to the Applicant than the estimated $847,250 difference" and therefore Alternative 1 was not chosen as the preferred alternative.

In accordance with the federal 404(b)(1) Guidelines, costs may be considered by an applicant in determining the LEDPA for purposes of eliminating a site when the cost to construct the project at that site is not considered practicable. There is no requirement in the 404(b)(1) Guidelines, SWCL, or VWP Permit Program regulations that requires the LEDPA to be the least expensive alternative.

The preferred site is stated to be practicable by the applicant from a cost standpoint.

6.8.4 Logistics
The application explains that the proposed entrance to the distribution center at the Airpark site is approximately 2 miles from the I-95/Route 656 (Sliding Hill Rd) interchange. This allows trucks to access I-95 in an efficient manner (straight route), while minimizing the amount of time they would have to spend on local roads. Additionally, as part of the thoroughfare plan, Sliding Hill Road has already gone through recent widening improvements, which helps eliminate the logistical challenges and costs of any further offsite road improvements such as those presented in the alternatives. The preferred site is practicable in terms of logistics.

6.8.5 Technology
The applicant did not identify any technological challenges associated with construction of the distribution center associated with the preferred site. The preferred site is practicable in terms of technology.

6.9 On-Site Alternatives
Numerous on-site layouts were examined to develop the regional grocery distribution center in a manner that avoids and minimizes impacts to environmentally sensitive areas to the maximum extent practicable, while meeting configuration requirements necessary to provide efficient long-term operation of the facility. The application states that the proposed facility components include Phase I construction of an approximately 1.1 million contiguous square feet (sq. ft) facility developed in a "L" shape that will house a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and site security). Appurtenant facilities such as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. returning trailer cleanout & and site security) are necessary for operations. A near future Phase II expansion to approximately 1.3 million square feet that includes expansion of the dry warehouse and the temperature controlled warehouse. Phase III - future development/expansion of the distribution center will be constructed in accordance with county zoning which allows for a maximum buildout of 1.7 million square feet.

In designing the Wegmans Distribution Center campus in Hanover County, the application states that the best design and operational practices were considered from all previous and existing Wegmans facilities, and were incorporated resulting in the "L" shaped campus and implementation of cross docking. The Hanover County site was designed to maximize the efficiency of the site, to allow for the least amount of impact to identified surface waters and to limit the areas of disturbance where practicable.

Sections 5.0 and 6.0 of the application materials submitted on September 15, 2020 indicated that the preferred on-site alternative layout was determined to be the LEDPA, while meeting the needs of the proposed development. The preferred on-site alternative layout provides sufficient area to construct the proposed distribution center in such a way that serves to minimize surface water impacts, avoids encroaching on existing easements, and requires the least amount of cut and fill based on the existing percent slope.

Section 5.4 of the application materials submitted on December 2, 2019 describes an on-site alternative that was considered by the applicant, which would also realize the purpose and need of the project in the required configuration, but would have resulted in impacts greater than the proposed layout, thus also increasing mitigation costs. To reduce impacts, the applicant reconfigured the secondary access road from Ashcake Road.

In order to ensure that impacts to on-site surface waters (including wetlands) are avoided and minimized to the maximum extent practicable, the permittee must describe what specific measures were taken in designing the project to accomplish that. The costs of the measures relative to the project scope are also considered in determining the LEDPA.

Information included in Section 6.0 of the application materials includes on-site techniques that were examined to further minimize impacts, including slope grading, and strict adherence to all state and local erosion and sediment control measures. The fill slopes will be graded to a 3:1 slope. A review of incorporating steeper slopes was analyzed, but given the high level of traffic anticipated for the proposed roadways, 3:1 slopes were utilized for the project in order to safeguard from potential slope failures. They also provide an increased level of safety for vehicles and pedestrians in the event that either leave the travel way. In response to a request for additional information, the applicant also provided information stating that because of flat nature of the site, there is little difference between the footprint of 2:1 slopes vs. 3:1 slopes. In areas where the proposed site grading diverges from the existing grades, tie-in slopes of 3:1 horizontal to vertical have been utilized to tie proposed grades to existing in a stabilized manner. A 3:1 tie-in slope has little erosion potential and alleviates maintenance concerns.

Staff requested an evaluation of a number of different on-site alternatives in the December 10, 2019 meeting. A response memo was received on December 13, 2019, documenting the analysis of access, parking, stormwater management, building footprint, and minimization of secondary impacts. The following summarizes the on-site avoidance and minimization documented in the December 13, 2019 memo.

- The building footprint could not be reduced by adding a vertical level because the proposed building heights are near the maximum allowable height based on municipal and zoning regulations. Additionally, the proposed configuration is the most efficient based on a review of other large scale distribution facilities in the industry and other similar facilities. Using a different layout would mean a less efficient operation and would also require a larger building to be built.
- The parking space allotment is dictated by the required employee parking spaces, as the facility will employ upwards of 700 people upon project completion, as well as the required truck and trailer access and facilities. While not all 700 employees will be working at the same time, during shift changes the parking facility will experience a high volume of traffic. The size of the parking facility

is dictated by the number of employees onsite during peak shift change volume. There will be one primary access from Sliding Hill Road.

- Utility crossings have been designed within roadway crossings, where feasible, in order to reduce the number and area of impacts to surface waters. Additionally, the roadway crossings have been designed to cross perpendicularly to the surface waters and at the narrowest most points feasible. Care has been taken to design roadways, buildings and stormwater facilities so that they do not laterally impact the remaining wetland area located between Impacts 5 and 9A/9B.
- Due to the flat and expansive nature of the proposed site development, storm sewer pipes cannot daylight in the eastern areas of the site without globally raising the site grading in a way that makes earthwork unfeasible. Curb cuts are not desired as they would become quickly overtaxed by the 100% impervious contributing drainage area. Releasing drainage in this manner would likely create a quality compliance problem as curb cuts achieve zero pollutant removal. Additionally, curb cuts would also defeat the primary intent of the curb at this facility, which is to prevent trailers from being backed up into a light pole or the perimeter fence.
- The proposed stormwater facilities have been sized to provide compliance with the minimum requirements of the Virginia Stormwater Management Program and has been sited outside of the on-site jurisdictional wetlands. These requirements include energy balance, channel and flood protection. Additionally, the main stormwater management facility outflow has been designed to maintain and mimic existing drainage conditions to nearby Totopotomoy Creek. There are no other nearby surface waters anticipated to be impacted by proposed construction activities.
- The impervious areas proposed are all necessary for the adequate flow of truck traffic and personnel on-site during working hours. Parking spaces, drive aisles, and curbing is sited at the minimum offsets/spacing needed as directed by the distribution center end user.

Staff also reviewed the potential for secondary impacts to remaining unimpacted surface waters across the site. Due to stormwater requirements, post development flows on site have been reduced, resulting in the potential for secondary impacts due to diversion of storm water at Impacts 4A, 4B, 6, 18B, 20B, and 25B. This has resulted in 1.44 acres of forested wetland and 0.02 acre of jurisdictional ditch to be considered secondarily impacted due to a reduction of hydrology. These impacts are accounted for in the compensation package proposed by the applicant. Stormwater alternatives that were considered in the vicinity of Impacts 6, 18B, 20B, and 25B were to construct curb cuts, however, due to the size of the project and the amount of impervious area associated with a warehouse facility curb cuts were deemed infeasible. Impacts 4A and 4B are a result of a culvert being removed at Impact 3B. Due to the hydraulic nature of the culvert design, it was determined that a negative backwater effect would occur on the adjacent parcel. An alternative proposing a partial flow through a proposed culvert was considered, however the negative impacts to the adjacent parcel would still remain. The current proposed configuration at Impact 3B is the most efficient design to minimize offsite impacts to adjacent parcels.

Additionally, the remaining unimpacted wetlands adjacent to Impact Areas 8A/8B and 12-17 will be monitored to determine if there will be secondary impacts to the remaining wetlands at these locations. Monitoring of the remaining wetland areas will include data collection of hydrophytic vegetation, hydrology, soil samples, and photo documentation. A final wetland monitoring plan will be submitted to DEQ for review and approval no later than 60 days prior to the start of construction.

Staff requested the actual amount of surface waters to remain on-site and the applicant provided a response, which indicates that 15.1 acres of unimpacted surface waters will remain on-site. According to

the applicant, the final proposed development plan represents the smallest practicable and best-oriented development that still meets the project's intended purpose and need.

Relevant information regarding the applicant's avoidance and minimization efforts can be found in the application as well as the additional information responses provided on December 13, 2019, December 20, 2019, February 14, 2020, March 12, 2020, September 15, 2020, September 22, 2020, and September 28, 2020.

Based upon staff review, the proposed plan represents the LEDPA and all unavoidable permanent impacts will be adequately mitigated through the proposed compensation plan that is in accordance with statutory and regulatory requirements.

7. Project Impacts:

This proposed permit authorizes the total impact to 14.85 acres of surface waters.

- Permanent fill impacts are to 12.99 acres of palustrine forested (PFO) wetland, 0.23 acre of palustrine emergent (PEM) wetland, and 0.14 acre of jurisdictional ditch.
- Secondary impacts, due to diversion of surface water, are to 1.44 acres of palustrine forested wetland and 0.02 acre of jurisdictional ditch.
- Temporary impacts are to 0.03 acre of palustrine emergent wetland.
- Authorized surface water impacts described under this condition shall be as depicted on the impacts map entitled "Wegmans Distribution Center, Hanover County, Virginia, Wetlands and Waters Impacts Map" dated September 8, 2020, last revised on September 24, 2020, and received October 7, 2020, and drawn by Timmons Group.

Impact Type	Surface Water Type	DEQ-Authorized Impact	Mitigation Ratio	Mitigation Required
		Acres		Wetland Credits
Permanent	Palustrine Forested Wetland (PFO)	12.99	2:1	25.98
	Palustrine Emergent Wetland (PEM)	0.23	1:1	0.23
	Jurisdictional Ditch	0.14	2:1	0.28
	Subtotal	13.36		26.49
Secondary	PFO	1.44	2:1	2.88
	Jurisdictional Ditch	0.02	2:1	0.04
	Subtotal	1.46		2.92
Temporary	PEM	0.03	N/A	N/A
	Subtotal	0.03		
	Total	**14.85**		**29.41**

8. Compensation for Unavoidable Impacts:

Permanent forested wetland impacts, emergent wetland impacts, and jurisdictional ditch impacts resulting from fill activities will be compensated at a 2:1, 1:1, and 2:1 ratio, respectively. Secondary forested wetland impacts and secondary jurisdictional ditch impacts will be compensated at a 2:1 ratio. As compensation for permanent impacts, the permittee shall purchase 29.41 wetland mitigation credit(s). All compensatory mitigation credits shall be purchased from a DEQ approved mitigation bank, an approved in-lieu fee (ILF) program, or a combination thereof as specified below. The bank or program must be authorized and approved by DEQ to sell credits in the area in which the impacts will occur and have credits available (as released by DEQ). Any credit sale shall be in accordance with the approved Mitigation Banking Instrument or ILF Program Instrument. Purchase of required mitigation credits shall occur first through the purchase of available released credits followed by the purchase of advance credits. Multiple banks may be used to fulfill compensation requirements.

Based on the information provided, the jurisdictional ditches on-site are no longer providing functionality with respect to drainage. With this, and due to the adjacency of the jurisdictional ditches to the palustrine forested wetlands on-site, the jurisdictional ditches will be mitigated for at a 2:1 ratio.

The compensation package complies with § 62.1-44.15:21 and § 62.1-44.15:23 of the Code of Virginia.

9. Site Inspection:

DEQ staff, Bryan Jones, attended a site meeting with Timmons Group and RK&K on August 26, 2019. DEQ staff, Bryan Jones, attended a jurisdictional wetland confirmation site visit with Ms. Elaine Holley, of the USACE, Timmons Group, and RK&K on October 16, 2019.

On August 19, 2020, DEQ staff, Bryan Jones, attended a site visit conducted by Corps representatives Ms. Holley, Dr. Herman W. Hudson III, and Mr. Steven VanderPloeg. Matt Neely, with Timmons Group also attended. On August 21, 2020, DEQ staff, Bryan Jones, attended a site visit conducted by Corps representatives Dr. Hudson, and Mr. VanderPloeg. Matt Neely, with Timmons Group also attended. During the August 19th and 21st, 2020 site visits, DEQ observed the field review activities as referenced in the additional information request letter from the U.S. Army Corps of Engineers (Corps), received via email on August 12, 2020. As a result of these site visits, a revised PJD was issued on September 15, 2020 and a Memorandum for The Record (MFR) was received by DEQ on September 24, 2020.

10. Relevant Regulatory Agency Comments:

As part of the application review process, DEQ contacted the appropriate state regulatory agencies. No comments received required a change to the VWP individual permit Part I - Special Conditions. Therefore, the staff anticipates no adverse effect on water quality and fish and wildlife resources provided the applicant adheres to the permit conditions.

Summary of State Agency Comments and Actions
By email/letter dated December 9, 2019, comments were requested from the following state agencies: Virginia Department of Wildlife Resources (DWR) (formerly DGIF), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC), and Virginia

Department of Health (VDH). Failure to provide comments within 45 calendar days of the DEQ request for comments infers that the agency has no comments on the project activities.

DCR

DCR provided the following comments in a memorandum dated December 18, 2019, and transmitted by email on December 18, 2019:

- According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100-foot buffer. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.
- DCR concurs with the negative survey results for this project from "Survey for Swamp Pink (*Helonias bullata*), Hanover County, Virginia" prepared on June 17, 2019 by Chris Ludwig, Seedbox Consulting.
- DCR recommends efforts to minimize edge in remaining fragments, retain natural corridors that allow movement between fragments and designing the intervening landscape to minimize its hostility to native wildlife (natural cover versus lawns).
- There are no State Natural Area preserves under DCR's jurisdiction in the project vicinity. The current activity will not affect any documented state-listed plants or insects.

No response necessary.

Additional comments were requested from DCR on September 17, 2020. DCR provided the following comments in a memorandum dated September 23, 2020:

- According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100-foot buffer. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.
- DCR concurs with the negative survey results for this project from "Survey for Swamp Pink (*Helonias bullata*), Hanover County, Virginia" prepared on June 17, 2019 by Chris Ludwig, Seedbox Consulting.
- DCR recommends efforts to minimize edge in remaining fragments, retain natural corridors that allow movement between fragments and designing the intervening landscape to minimize its hostility to native wildlife (natural cover versus lawns).
- There are no State Natural Area preserves under DCR's jurisdiction in the project vicinity. The current activity will not affect any documented state-listed plants or insects.
- Recommends coordination with DWR as this agency has regulatory authority for the management and protection of threatened and endangered species not documented by DCR.

Prior to comments received from DCR on September 23, 2020, staff most recently requested comments from DWR on the proposed project on September 17, 2020. No response necessary for remaining comments received from DCR on September 23, 2020.

DWR (previously DGIF)
DWR provided the following comments to DEQ by email dated January 27, 2020:

- DWR does not currently document any listed wildlife or designated resources under their jurisdiction from the project area. Therefore, DWR does not anticipate adverse impacts upon such species or resources to result from the proposed work.

- DWR recommended conducting any in-stream activities during low or no-flow conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the streamflow at any given time, stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, revegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures.

  The special conditions of the proposed permit address these activities.

- DWR recommended that the permittee avoid and minimize impacts to undisturbed forest, wetlands, and streams to the fullest extent practicable to minimize overall impacts to wildlife and our natural resources. DWR also recommended maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams.

  Staff reviewed the proposed impacts to surface waters and determined those proposed have been minimized to the maximum extent practicable.

- DWR recommended that the stormwater controls for this project be designed to replicate and maintain the hydrographic condition of the site prior to the change in landscape.

  Oversight of stormwater management and erosion and sediment control measures is the responsibility of DEQ-Stormwater Management or the locality, if such responsibility has been delegated. Any such requirements will be implemented under the oversight of that program.

- DWR recommended that all tree removal and ground clearing adhere to a time of year restriction protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

  This time of year restriction was not included in the proposed permit as it is not associated with a threatened or endangered species. The recommendation was forwarded to the permittee for their consideration.

- DWR recommended coordination with the USFWS regarding potential impacts upon federally Threatened northern long-eared bats associated with tree removal.

  The project is being reviewed by the USACE for an individual permit and coordination with the USFWS will occur under federal coordination procedures.

- DWR recommended adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

  Oversight of stormwater management and erosion and sediment control measures is the responsibility of DEQ-Stormwater Management or the locality, if such responsibility has been delegated. Any such requirements will be implemented under the oversight of that program.

Additional comments were requested from DWR on September 17, 2020. DWR responded via email on September 21, 2020 stating that there are no concerns regarding the proposed changes to the subject project and that the previous project comments remain valid.

VDH
VDH provided the following comments in a memorandum dated December 10, 2019, and transmitted by USPS received on December 13, 2019:

> VDH stated no public raw water intakes were found, in the Commonwealth, downstream from the Project Tiger (Wegmans Distribution Center) area.

VDH provided the following comments in an email dated November 10, 2020, in response to the public comment period notification:

- There are no public groundwater wells within a 1-mile radius of the project site.
- There are no surface water intakes located within a 5-mile radius of the project site.
- The project is not within the watershed of any public surface water intakes.
- There are no apparent impacts to public drinking water sources due to this project.

No response necessary.

VMRC
VMRC provided the following comments in a letter dated and transmitted by email on December 16, 2019:

After completion of the JPA review process, a No Permit Necessary determination was issued by the VMRC on December 11, 2019, given that no impacts under their jurisdiction were proposed. As such, the VMRC has no objection to DEQ's issuance of a VWP individual permit.

No response necessary.

11. Riparian Landowner Notification:

Staff notified 41 riparian landowners located adjacent to the impact area and within one-half mile downstream of each distinct impact area by letter dated December 10, 2019. Two responses were received:

1. On December 20, 2019, Ms. Betty Lozano called regarding a potential cemetery on-site; this information was forwarded to the USACE.
2. On February 14, 2020, Ms. Polly Vaughan called asking for the USACE project manager contact name and asked to be notified when the Public Notice is published. She expressed potential concerns regarding stormwater runoff towards her property at GPIN 7798-67-7448.

Notifications of riparian and adjacent landowners were conducted in accordance with DEQ's Guidance Memorandum No. 11-2005 (Revised Local Government, Riparian Property Owner, Adjacent Property Owner or Resident, and General Public Notification Procedures for VPDES, VPSA and VWP Permit Applications and Draft Permits).

12. Public Comment and Public Hearing:

The public notice was published in the Richmond Times Dispatch on March 31, 2020. The public comment period ran from March 31, 2020 to April 30, 2020.

DEQ received 119 comments, 117 from private citizens, 1 from a non-profit organization, and 1 from an attorney representing interested citizens. Of the comments, 3 supported the proposed permit, 115 opposed it, and 1 did not provide an opinion. One-hundred ten commenters requested a public hearing and 53 requested the denial of the VWP individual permit.

As a result of public interest, on May 21, 2020 the DEQ Director authorized a public hearing. A public hearing comment period of 45-days was published in the *Richmond Times-Dispatch* on June 20, 2020 and ended on August 5, 2020. A public hearing was held on July 20, 2020. DEQ received 251 comments, 243 from private citizens, 4 from non-profit organizations, and 3 from attorneys representing the interest of various associated parties. A joint letter opposing the project was submitted by the following signing parties: Protect Hanover, Brown Grove Preservation Group, Chesapeake Legal Alliance, Brown Grove Baptist Church, Virginia Environmental Justice Collaborative, Virginia League of Conservation Voters, Green New Deal Virginia, Sunrise Richmond, Falls of the James Group, Virginia Poor Peoples Campaign, AMMD Pine Grove Project, Clean Water Action, United Parents Against Lead & Other Environmental Hazards; Partnership for Smarter Growth, Virginia Network for Democracy and Environmental Rights, Center for Sustainable Communities, Coalition for Hanover's Future, and Center for Progressive Reform. Of the comments, 4 supported the proposed permit and 247 opposed it.

Comments received during the comment periods opposing the proposed permit contained similar concerns regarding the following:

- Insufficient wetland delineation
- Insufficient analysis for off-site alternatives and LEDPA determination
- Insufficient analysis of secondary impacts to adjacent wetland systems
- Concerns about increased flooding and proper stormwater management from the site
- Concerns regarding historic resources on the proposed site, including graves
- Lack of proposed compensation for impacts to Open Water Jurisdictional Ditches on site
- Inadequate consideration of Environmental Justice issues
- Water quality impacts to downstream waters
- Potential for Threatened & Endangered Species on the proposed site

- Lack of impact analysis on RPA/RMA in accordance with the Chesapeake Bay Preservation Act
- Other concerns including county proffers, traffic congestion, noise pollution, 24/7 operations, etc.

As a result of public comments, the Corps reviewed and ultimately revised the PJD for surface waters at the proposed site. The revised PJD resulted in increases to proposed surface waters impacts on site and compensatory mitigation requirements. Staff also re-evaluated the potential for secondary (hydrology) impacts on site and the determination of an open water exclusion for jurisdictional ditches. Due to these changes, a joint public comment period and hearing was advertised on October 20, 2020 to allow for public comments on the revised proposed permit. DEQ received comments from a total of 262 individuals and organizations. During the hearing, there were 22 speakers, all of whom also submitted written comments.

A summary of comments received during all comment periods and hearings as well as staff responses are provide in **Attachment A**.

13. Special Conditions:

The following conditions were developed to protect instream beneficial uses, to ensure compliance with applicable water quality standards, to prevent significant impairment of state waters or fish and wildlife resources, to provide for no net loss of wetland acreage, and to provide no net loss of functions in all surface waters through compensatory mitigation and monitoring and reporting.

Section A Authorized Activities

Nos. 1-3 addresses the activities authorized by the permit, including impact types and totals.

Section B Permit Term

Nos. 1-2 addresses the permit term and re-issuance process to ensure that all permit conditions are completed.

Section C Standard Project Conditions

No. 1 addresses the requirement for the minimization of adverse impacts to instream beneficial uses.
No. 2 ensures that the project will be executed in a manner that limits the disruption of the movement of aquatic life.
No. 3 ensures that downstream flows will be maintained to protect both instream and off-stream beneficial uses.
No. 4 ensures the minimization of adverse effects on navigation.
No. 5 ensures the passage of high flows.
No. 6 requires maintenance of continuous flow of perennial springs for the protection of instream beneficial use.
No. 7 ensures that dredging and filling operations will minimize stream bottom disturbances and turbidity.
No. 8 requires instream activities to be conducted during low-flow conditions to protect instream beneficial uses.

No. 9 requires that erosion and sediment controls are designed and maintained in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
Nos. 10 through 12 provide requirements and limitations on the entry of various materials (including concrete, fill, construction and waste material, fuels, lubricants, and untreated stormwater runoff) into state waters.
No. 13 limits the use of machinery and equipment in surface waters to protect beneficial uses.
Nos. 14 through 19 require temporary disturbances to surface waters during construction to be avoided and minimized to the maximum extent practicable and the restoration of such temporary disturbances.
No. 20 prohibits the violation of Water Quality Standards in surface waters as a result of project activities.
No. 21 requires the identification of all non-impacted surface waters in the vicinity of the proposed activity to prevent unpermitted impacts.
Nos. 22 through 26 set forth all reporting requirements concerning construction, monitoring, compensation, and restoration as required by current law and regulations.

Section D Installation of Utilities

No. 1 requires the minimization of disturbance to surface waters and restoration to preconstruction conditions following utility line installation.
No. 2 sets a 90-day time limit for temporary sidecasting during trench excavation to minimize impacts to surface waters.
No. 3 provides the requirements for trench construction to avoid the drainage of surface waters.

Section E Road Crossings

No. 1 provides specifications for access road construction to minimize adverse effects to surface waters.
No. 2 ensures pipes and culvert construction is conducted in the dry to protect water quality and wildlife habitat.
No. 3 requires that temporary impacts be restored immediately following construction to minimize impacts to water quality and fish and wildlife resources.
Numbers 4-7 in this section of the template Special Conditions were not included in the permit because no streams were classified within the project limits.

Section F Stormwater Management Facilities

No. 1 defines the general requirements for stormwater management facility construction to minimize adverse effects to aquatic resources and provide for long-term aquatic resources protection and enhancement.
No. 2 provides limits and guidance for maintenance excavation to avoid unpermitted impacts to surface waters.
No. 3 requires correct draining methods to minimize sedimentation of surface waters.

Section G Project Construction Monitoring and Submittals (Impact Sites)

Nos. 1 through 6 address monitoring and submittals required for pre-construction, during construction and post-construction for the impact areas on site.

Section H Compensatory Mitigation

No. 1 describes the compensatory mitigation required to mitigate for the permitted impacts.
Nos. 2 and 3 describes the hierarchy of credit sources.
No. 4 describes the documentation requirement for the purchase of the required amount of credits.

Section I Project Wetland Monitoring and Submittals (Remaining Wetlands)

This section was added to monitor wetland conditions within the remaining wetland areas directly adjacent to Impact Areas 8A/8B, 12, 13, 14, 15, 16, and 17. Nos. 1 through 4 lists the requirements for monitoring of these wetland areas being monitored for secondary impacts and the requirements for the associated report submittals and notifications.

Sections of the template Special Conditions that were not included in the permit are: Projects Involving Stream Modifications, Including Intake/Outfall Structures; Projects Involving a Golf Course; Projects Involving a Marina; Dredging Activities; On/Off Site Creation, Restoration, and/or Preservation Standard Conditions; Wetland Compensation Site Construction Tasks, Monitoring, and Submittals; Stream Compensation Site Construction Tasks, Monitoring, and Submittals.

14. General Conditions:

The general conditions specified in the effective VWP Permit Program Regulation 9VAC25-210 apply to all VWP individual permits.

15. General Criteria (9VAC25-260-20.A):

State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.

Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled. Conditions within mixing zones established according to 9VAC25-260-20.B do not violate the provisions of this subsection.

16. Staff Findings and Recommendations:

- The proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law, and will protect instream beneficial uses.
- The proposed permit addresses avoidance and minimization of wetland impacts to the maximum extent practicable.

- The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources.
- The proposed permit conditions address no net loss of wetland acreage and no net loss of functions in all surface waters, through compensatory mitigation via the purchase of wetland credits and reporting.
- The proposed permit reflects the required consultation with and full consideration of the written recommendations of VMRC, VDH, DCR, and DWR.

17. Action by the State Water Control Board

The Board approved VWP Individual Permit No. 19-2036 in a vote of 4-3.

Attachment A

Summary of Public Comments and Staff Responses

Briefing Memorandum for Issuance of a Virginia Water Protection (VWP) Individual Permit (IP)– Wegmans Distribution Center, draft VWP IP Permit No. 19-2036 – Wegmans Food Markets, Inc.

Attachment 1 includes a list of acronyms used throughout this document for reference. The draft permit, proposed impact maps, and fact sheet are included as Attachments 2, 3, and 4, respectively.

I. PROJECT BACKGROUND

Project Description

Joint Permit Application (JPA) Number 19-2036 was submitted on November 27, 2019, by Timmons Group, on behalf of the applicant, Hanover County Economic Development, under the name *Project Tiger*. The JPA number was received by DEQ on December 2, 2019. The application was transferred to **Wegmans Food Markets, Inc.** for the Wegmans Distribution Center on December 20, 2019. The applicant proposes to construct a retail grocery distribution facility in three phases. Phase I includes construction of an approximately of a 1.1 million contiguous square feet facility consisting of a dry warehouse, refrigerated warehouse, return center, food manufacturing facility, and offices, with the ability to expand with future growth, as well as parking and staging areas for tractor trailers, parking for associates, and ancillary support buildings (i.e. fleet maintenance, dispatch and site security). Phase II expands the operation to 1.3 million square feet, adding additional dry and temperature controlled warehouses. Phase III of the project will expand the operation to a cumulative buildout of 1.7 million square feet. The project is located in Hanover County on an approximately 219.6-acre site that is situated south of Ashcake Road, northwest of Sliding Hill Road, and east of Egypt Road.

Based on the JPA and additional application materials received through March 20, 2020, DEQ drafted a permit for impacts to 6.12 acres of wetlands. The draft permit was public noticed on March 31, 2020. DEQ received 119 individual comments of which 110 requested a public hearing. Due to substantial public interest in the draft permit, on May 21, 2020 the DEQ Director authorized a public hearing on the draft permit. A public notice announcing the hearing was published on June 20, 2020. The hearing took place on July 20, 2020, and the associated comment period closed August 5, 2020. Mr. Tim Hayes served as the Hearing Officer. During the July 20, 2020 hearing there were 35 speakers.

Significant comments were raised by the public during the comment period and hearing challenging the accuracy of the preliminary jurisdictional determination (PJD) for the site confirmed by the U.S. Army Corps of Engineers (USACE). DEQ sent a letter to the USACE dated August 5, 2020, requesting review of the PJD. On August 19 and 21, 2020, the USACE conducted additional field work at the site and determined that the extent of Waters of the United States and associated surface waters on site was greater than previously delineated, and subsequently the USACE issued a revised PJD on September 15, 2020.

Revisions to the PJD were explained in a Memo for the Record (MFR) from the USACE dated September 24, 2020. The MFR is included as Attachment 5 to this memorandum. As explained in the MFR, there have been numerous wetland delineations and USACE surface water confirmations for the proposed site going back as far as 1992. An active PJD dated March 20, 2018 existed at the time that the applicant began the site selection process. During an August 28, 2019 pre-application site visit, DEQ staff determined more wetlands were potentially on site than identified on the March 20, 2018 PJD. As a result, an additional delineation was performed, and the USACE issued an updated PJD on October 30, 2019 and revision dated February 11, 2020. As described above, during the initial draft permit public comment period, significant public comments were received that caused the USACE to review the PJD, conduct additional field work, and issue a revised PJD dated September 15, 2020 that was used for purposes of this revised draft permit.

The USACE also issued a PJD on September 24, 2020 for surface waters in a small portion of the project area along Ashcake Road and Sliding Hill Road associated with road improvements and utilities.

As a result of the increased surface waters confirmed on the site, the applicant submitted revised application materials to DEQ on September 15, 2020, to update the proposed impacts at the site. The applicant also submitted additional information for the project through October 16, 2020 in response to additional information requested by DEQ. After reviewing the updated information, DEQ revised the draft permit to authorize 14.85 acres of wetland impacts as a result of the updated PJD.

Proposed Impacts

The draft permit authorizes the total impact of 14.85 acres of surface waters, consisting of 13.36 acres of permanent impacts, 1.46 acres of secondary impacts and 0.03 acre of temporary impacts.

- Permanent impacts, including secondary impacts from loss of hydrology, consist of 14.43 acres of palustrine forested (PFO) wetland and 0.23 acre of palustrine emergent (PEM) wetland, and 0.16 acre of jurisdictional ditch for the facility construction and other associated permanent infrastructure.
- Temporary impacts consist of 0.03 acre of PEM wetland for water utility lines.

Proposed Compensation

The proposed permit requires that the applicant purchase wetland mitigation credits in the amounts shown below as compensatory mitigation for proposed impacts. In accordance with § 62.1-44.15:23(A) of the Code of Virginia, all credits will be purchased from a DEQ-approved mitigation bank within the same United States Geological Survey Hydrologic Unit Code (HUC) as the project site, or in an adjacent HUC and in the same river watershed.

Compensation ratios will be at a 2:1 replacement to loss ratio for PFO and jurisdictional ditch impacts and a 1:1 replacement to loss ratio for PEM impacts.

Impact	Mitigation Ratio	Required Mitigation Bank Credits
14.43 acre forested wetlands (permanent)	2:1	28.86 wetland credits
0.23 acre emergent wetlands (permanent)	1:1	0.23 wetland credit
0.16 acre jurisdictional ditch (permanent)	2:1	0.32 wetland credit

Authorization to Convene a Public Hearing

Due to the significant public interest during the previous public comment periods, DEQ held a public hearing regarding the proposed issuance of the revised draft VWP IP No. 19-2036. The DEQ Director authorized the public hearing for the revised draft permit on October 14, 2020.

Draft Permit and Hearing Public Notice

The public notice of the revised draft permit and public hearing was published in the *Richmond Times Dispatch* on October 20, 2020. Notification of the draft permit comment period and public hearing, and copies of the public notice were sent to the locality in which activities are proposed. The public hearing was held on November 19, 2020, and comments were received through December 4, 2020.

Public Hearing
The hearing was held as an electronic meeting in compliance with Item 4-0.01G of Chapter 1289 of the 2020 Acts of Assembly. As a result of the March 12th, 2020, Declaration of a State of Emergency due to COVID-19, Executive Order 51 and subsequent orders 53 and 55 and in keeping with Governor Northam's temporary restrictions and directions to stay at home, the public hearing was held via electronic communication through GoToWebinar platform. The public hearing for the revised draft permit was held on November 19, 2020, from 7:00 p.m. to 9:30 p.m. Ms. Heather Wood served as the Hearing Officer. An informal briefing session was held prior to the hearing. A copy of the hearing transcript is available in Attachment 6.

Public Comment
During the public comment period, beginning October 20, 2020 and ending on December 4, 2020, staff received written and oral comments from a total of 262 individuals and organizations. During the hearing, there were 22 speakers, all of whom also submitted written comments.

Attachment 7 includes a comprehensive list of individuals and organizations who provided comments during one or more of the draft permit public comment periods or public hearings.

Of the comments submitted, 423 individuals and 42 organizations/groups provided comments during the comment periods, 3 commenters were in support of the draft permit and 462 commenters were opposed to the draft permit.

II. SUMMARY OF COMMENTS DURING PUBLIC COMMENT PERIODS

Below is a summary of the comments received during all of the comment periods and hearings for the draft VWP permit. Attachment 8 also includes a sampling of comment letters received during the most recent comment period. Several commenters used form letters to submit written comments. Sample form letters are also included in Attachment 8. All comments received during the comment periods are part of the record and are available upon request.

1. Support

Staff received three comments in support of the project and permit.

Staff Response:
Staff has no response to these comments.

2. Incomplete Application

Staff received comments that the applicant had not submitted a complete application. These comments focused on:

- *DEQ should not allow the applicant to continue to submit new or updated project information during the application review process.*
- *Applicant has been taken at its word with no investigation/questioning by DEQ.*
- *The application did not include a complete description of the impacts to the surface waters of Totopotomoy Creek, Kersey Creek, and Campbell Creek.*

- *The application does not meet the VWP application requirements in 9VAC25-210-80.B.1 h(4) because the delineation was not conducted in accordance with the USACE Wetland Delineation Manual as required in 9VAC25-210-45.*
- *The JPA did not include a previous delineation referenced in Section 3.2 and that delineation has not been provided for public review.*
- *The application did not include a functional assessment of wetlands to be impacted in accordance with 9VAC25-210-80.C.*

Staff Response:
The requirements for VWP permit applications are identified in 9VAC25-210-80.B of the VWP regulations. In addition to the application requirements, by regulation, DEQ has the authority to request additional information it deems necessary to ensure the project meets statutory and regulatory requirements or in order to a make a decision to approve or deny the permit. There are no statutory or regulatory limitations in State Water Control Law (SWCL) or the VWP Permit Program regulations on the number of times DEQ may request additional information or an applicant can submit revised or updated information. The technical information on operations and logistics of specific type of projects and construction activities are provided by the applicant. If the information provided by the applicant appears to be reasonable, it is presumed to be accurate and representative of the project. If DEQ finds the information unclear or receives public comments, DEQ makes the determination to require additional information. It is routine for DEQ to request that the applicant provide clarifications or update information.

The applicant submitted an initial application on November 27, 2019 (received December 2, 2019), and on several occasions, DEQ requested additional information from the applicant both during the application review and as a result of comments received from the public. Additionally, the applicant provided updated and revised application materials as a result of the revised delineation and PJD issued by the USACE on September 15, 2020.

With regard to application requirements to identify impacted surface water, 9VAC25-210-80.B.1.e (2) requires applicants to name "the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites." Impact maps provided with the JPA identified those surface waters that the applicant proposes to impact with the project. Specifically, the applicant identified impacts to unnamed tributaries of Totopotomoy Creek, Kersey Creek, and Campbell Creek, all located within the York River basin. The information contained in the application satisfied the application requirements of 9VAC25-210-80.B.1.e (2)

The delineation information submitted in the initial application included a copy of the USACE PJD confirmation issued on October 30, 2019, and supporting delineation documentation. While the narrative in Section 3.2 of the JPA states that a previous delineation was conducted at the proposed site, for purposes of DEQ's application review, it is not necessary for the applicant to provide previous jurisdictional determinations. DEQ did receive a copy of the previous PJD prior to receiving the application during pre-application discussions and site visits. While the historical PJD information is not part of the application materials for the project, they are and have been made available to the public through the Freedom of Information Act requests.

Comments were received stating that the application was incomplete because a functional assessment of wetlands proposed for impact was not provided in the application as required by 9VAC25-210-80.C. The regulations, specifically 9VAC25-210-80.C.1 states that a functional assessment analysis is not required if the proposed wetland impacts are 1.00 acres or less, or when the proposed compensatory mitigation plan includes "purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher." Because the applicant is proposing to purchase credits from a mitigation bank at the standard mitigation bank ratios, a functional assessment analysis is not required.

Based on review of the application materials, all application requirements in 9VAC25-210-80.B of the VWP Permit Program regulations are satisfied.

3. <u>Surface Water Determination</u>

Staff received comments that the jurisdictional determination (i.e., surface water determination) issued by the USACE does not comply with the USACE Wetland Delineations Manual, Technical Report Y-87-1, January 1987, Final Report, and the approved regional supplement. These comments focused on:

- *According to the National Wetlands Inventory map, there are approximately 62 acres of wetlands on that site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, incorrectly assesses wetland areas as "mosaics" without following the proper technical procedures outlined in the delineation manual, and underestimates the surface waters on the site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, and September 15, 2020, is based on data collected during a drought, and underestimates the surface waters on the site.*
- *The PJD dated October 30, 2019, and revised February 11, 2020, and September 15, 2020, omits that Data Point 2 shows all three wetland parameters and demonstrates a connection of Wetlands 9 and 13.*
- *Wetlands 8, 9, 10, 12, 13 and 35 were eliminated and Wetland 11 was reduced in size because the areas did not exhibit one or more wetland parameters without any evidence and should be re-instated on the PJD.*
- *The USACE and DEQ were denied full site access by the property owner in August 2020.*
- *Request for a new wetland delineation performed by an independent third party.*
- *Both DEQ and the USACE staff knowingly accepted a wetland delineation that does not meet the requirements of both state and federal law.*
- *The wetland delineation fails to meet state law and regulatory requirements.*
- *DEQ should not rely on the USACE PJD and should conduct its own review of the delineation in accordance with 9VAC25-210-45.*
- *Little to no information regarding the quality of wetland on the site is provided.*

Staff Response:
The U.S. Fish and Wildlife Service's National Wetland Inventory (NWI) is a good tool for purposes of a desktop review and reasonable estimate of surface waters on the site. However, when a site requires USACE or VWP permitting, a field delineation is necessary to determine jurisdictional waters on a site for purposes of Section 404 of Clean Water Act and VWP permitting.

In accordance with § 62.1-44.15:21 of the Code of Virginia and 9VAC25-210-45, wetland delineations must be conducted using the procedures in the USACE's "Wetland Delineation Manual, Technical Report Y87-1, January 1987, Final Report" and subsequent regional supplements. The manual provides the methods that are to be followed in delineating wetlands. Under normal site and climate conditions, in order for an area to be considered a wetland, the area must exhibit all three wetland parameters that include: hydrology, hydrophytic vegetation, and hydric soils. Additionally, the manual includes procedures for conducting a wetland delineation under abnormal site and climate conditions. Confirmation of the wetland boundary by the USACE via a PJD or approved Jurisdictional Determination (AJD) fulfills DEQ's requirement for permitting purposes. While the PJD confirms the limits of all surface waters on a site and assumes all of those waters fall under federal jurisdiction, an AJD is the USACE's official determination of those surface waters that are jurisdictional for the purposes of federal

regulation and permitting. The USACE relies on information submitted by the property owner and typically conducts a field visit to verify the data submitted for the site.

The initial JPA received by DEQ on December 2, 2019 for the proposed project, and supplemental application materials received through March 20, 2020, proposed impacts to a total of 6.12 acres of wetlands based on the PJD from the USACE dated October 30, 2019, and revised February 11, 2020.

During both comment periods and the public hearing, DEQ received comments expressing concerns that the PJD of surface waters issued by the USACE for the proposed project site was inaccurate. Specifically, comments were received regarding technical procedures in the mosaic wetland delineation not being followed, disappearance of Data Point 2 in Wetland 14 confirming observations of wetland parameters, and procedures for conducting a delineation during a drought not being followed. Several commenters requested that DEQ perform its own confirmation or hire an independent 3rd party to conduct a delineation at the site.

Due to the significant comments on the surface water delineation confirmed by the USACE, DEQ sent a letter dated August 5, 2020, to the USACE requesting review of the October 30, 2019 PJD and February 11, 2020 revision. On August 19 and 21, 2020, the USACE conducted additional field work at the site and specifically reviewed Wetlands 11 and 14 that were previously deemed mosaic wetlands.

Following the August 2020 site visits, the USACE issued a revised PJD on September 15, 2020, and a Memorandum for the Record (MFR) supporting the PJD on September 24, 2020.

Citizens expressed concerns that the USACE was given limited access to the site on August 19 and 21 by the property owner in order to conduct the additional field work. However, the USACE has indicated that they had full access to the site and visited those areas they determined were necessary for re-evaluation.

Most significantly, the September 15, 2020 PJD identified that the two wetlands systems previously designated as mosaic (previously Wetlands 11 and 14, but now identified as Wetlands 7 and 9, respectively, in September 2020) were 100% wetland. The MFR addressed several of the surface waters and delineation comments received by DEQ and the USACE on the proposed project. These include:

- *Mosaic Wetlands*: The USACE concluded that the previously labeled Mosaic Wetlands 11 and 14, were incorrectly designated as 30% wetlands/70% uplands and 10% wetlands/90% uplands, and the procedures for Mosaic Wetland delineations were not followed. Both wetland systems were re-assessed as 100% wetlands/0% uplands. The boundaries for Wetland 11 and 14, now Wetlands 7 and 9, were reduced to more closely match the NRCS mapped hydric soil, Coxville Loam, boundaries within the project area and the gradual elevation changes.

- *Data Point 2*: Data collected by RK&K at DP-2 on October 11, 2019, indicated the presence of all three wetland parameters, and the area was shown on the delineation as a wetland. However, further review by the USACE indicated that DP-2 was located in an area mapped as having Dunbar fine sandy loam (non-hydric soil), which can contain inclusions of Coxville (hydric soils). It is believed that DP-2 may have been collected in a hydric soil inclusion and does not provide an appropriate representation of the surrounding area. Additionally, non-hydric inclusions were also observed within Wetland 14 suggesting that this is a transitional area between two soil types.

- *Drought*: During the delineation conducted on October 11, 2019, the region was experiencing drier than normal conditions. The USACE reviewed data from the USACE's Antecedent

Precipitation Tool (APT), used to analyze rainfall for wetland delineations, and results indicated that the delineation data was collected during the wet season, but that precipitation conditions at the time of the delineation were 'drier than normal'. The APT uses the 3 nearest NOAA weather stations to the site. The USACE also reviewed the Palmer Drought Severity Index (PDSI), used to estimate relative dryness, and results indicated a rating of 'Mild Drought' for the area.

Additionally, DEQ staff reviewed data used for drought designations by the Virginia Drought Management Task Force (DMTF). The DMTF issued a statewide Drought Watch in October 2019, however, a *Drought* designation was not declared for the region where the site is located at the time that the delineation was conducted.

- *Eliminated or reduced wetland boundaries*: Wetlands 8, 9, 10, 12, 13 and 35 were eliminated and Wetland 11 was reduced in size because the areas did not exhibit one or more wetland parameters.

As a result of the September 15, 2020 revised PJD, the applicant submitted updated application materials on September 15, 2020. The proposed wetland impacts were revised from 6.12 acres to 14.85 acres due to the increase in surface waters identified on the site. The supplemental application materials provided by the applicant from September 15, 2020 through October 16, 2020 included updated impact maps, a revised Least Environmental Damaging Practical Alternatives (LEDPA) analysis in accordance with the federal Clean Water Act 404(b)(1) Guidelines, and additional information regarding the offsite alternatives considered by the applicant.

DEQ reviewed the updated application materials, and ultimately determined that the applicant's preferred location remains the LEDPA for the proposed project. On October 20, 2020, a second public hearing was announced since the proposed impacts in the draft permit had substantially increased. A second hearing was held on November 19, 2020, and comments were accepted from the public from October 20, 2020 through December 4, 2020.

As previously stated, SWCL and the VWP Permit Program regulations require wetland delineations to be conducted using the USACE technical manuals and supplements. Confirmation of the wetland boundary by the USACE via a PJD or AJD fulfills DEQ's statutory requirement for permitting purposes. Because the USACE and DEQ staff are required to use the same reference materials and trained in the same methodology, DEQ relies on the jurisdictional determinations issued by the USACE. When questions arise regarding a delineation or confirmation, DEQ discusses those questions with the USACE. When questions were raised by citizens regarding the surface waters delineation for this project, DEQ followed up with the USACE for further review and analysis.

In response, the USACE performed additional field work at the site, reviewed the historical delineation and confirmation associated with property, and drafted an extensive MFR explaining the September 15, 2020 PJD, which was used in preparing the current draft permit. DEQ has reviewed the information in the MFR, and believes that the surface water delineation and September 15, 2020 PJD, and the September 24, 2020 PJD for an area of utility work, accurately represent conditions DEQ observed during site visits.

Please note that the USACE issued an AJD for the site on January 11, 2021, and revised the AJD on January 22, 2021. The AJD is USACE's official determination of those surface waters that are under federal jurisdictional. The AJD for the proposed site slightly reduces the amount of surface waters under federal jurisdiction from what was identified on the PJD. For purposes of the VWP draft permit, and in accordance with the SWCL, the extent of *state* surface waters on the site as identified on the PJD does not

change. Therefore, the proposed impacts and associated mitigation in the VWP draft permit does not change as a result of the AJD issued by the USACE.

4. <u>Compensatory Mitigation</u>

Staff received comments that the compensation is not adequate to offset the wetland impacts. Specifically comments states that:

- *The proposed compensatory mitigation plan is not sufficient to "to achieve no net loss" of wetland acreage and functions because of substantial errors in the PJD.*
- *The applicant will need to replace the destroyed wetlands at a rate of 2:1. Companies have a bad track record of following through with this practice, and creating the same quality habitats that were destroyed.*
- *The draft permit does not propose mitigation for 0.14 acres of jurisdictional ditches and the ditches are documented by the USACE as riverine, not palustrine.*

Staff Response:
DEQ reviewed the jurisdictional ditches on-site, and asked for additional information. The ditches appear to have been man made through the wetlands, likely associated with silvicultural activities, and do not appear to exhibit stream characteristics such as substrate sorting, ordinary high water mark, or geomorphology. DEQ originally approved the applicant's request for an exclusion for open water impacts in accordance with the exclusions in the VWP Permit Program regulations which would not have required mitigation for the jurisdictional ditch impacts. However, in light of comments received during the initial comment period, DEQ re-evaluated the Open Water exclusion request and determined that the Open Waters exclusion was not appropriate for the jurisdictional ditch impacts because the conveyance provided connectivity between wetland systems. As such, the revised draft permit was updated to include impacts and compensation associated with the jurisdictional ditches on site.

A comment was received that the ditches are classified on the USACE PJD as riverine. The PJD does not confirm Cowardin classifications. Due to the lack of typical stream characteristics such as substrate sorting, ordinary high water mark, or geomorphology and because the jurisdictional ditches appear to have been man made through wetlands, compensatory mitigation for impacts are required at the palustrine forested wetland mitigation ratios.

Impacts to surface waters require compensatory mitigation sufficient to achieve no net loss of wetland acreage and no net loss of function of wetlands and surface waters. The permit requires the credits be purchased from a DEQ approved mitigation bank, an approved in-lieu fee fund, or a combination thereof that is authorized and approved by DEQ to sell credits in the area in which the impacts will occur and has credits available (as released by DEQ). Mitigation credits are required to be purchased prior to taking any impacts on-site.

The permit proposes compensation at a 2:1 replacement to loss ratio for permanent PFO and jurisdictional ditch impacts and a 1:1 replacement to loss ratio for permanent PEM impacts. The USACE confirmed the wetland delineation originally on September 28, 2012, and reconfirmed the delineation in September 2017. The impacts used to calculate the compensation are based on the revised wetland delineation information confirmed by the USACE on October 30, 2019, revised February 11, 2020, and September 15, 2020, and a PJD issued on September 24, 2020. Additionally, the USACE issued an AJD on January 11, 2021 and revised on January 22, 2021 refining the scope of the federal jurisdiction of surface waters.

The compensatory mitigation plan proposed by the applicant meets the requirements of the SWCL and the VWP Permit Program regulations.

5. Secondary Impacts

Staff received comments that the permit does not account for all the wetland impacts associated with the project. The comments focused on:

- *The draft permit does not account for all of the secondary impacts that will occur on and offsite.*
- *Timmons proposed and DEQ allowed a new approach to calculating secondary impacts basing secondary impact calculations on the proportion of hydrology that will be reduced.*

Staff Response:
When reviewing the initial application, DEQ review noted that no secondary impacts to downstream surface waters resulting from a reduction in hydrology had been identified by the applicant. During a meeting with the applicant on December 10, 2019, DEQ requested additional information about the potential for secondary impacts due to reduction in hydrology west of impact areas 8A and 8B, formerly 6a and 6b (west of the employee parking area), and 20A (formerly Impact 9) and 25A (formerly Impact 14) (along Ashcake Road). The applicant provided additional information on December 13, 2019, explaining that secondary impacts near 8A and 8B are not expected due to the flat topography and precipitation driven wetland hydrology. Additionally soils in that location are identified as Coxville series loams which are "typically poorly drained and possess moderately slow permeability" likely due to the clay in the soil profile beginning at approximately 12 inches. Regarding wetlands near impact areas 20A and 25A, after further review the applicant concurred that the wetland system will be "unavoidably" secondarily impacted and adjusted the impact totals and maps accordingly.

DEQ staff also requested additional information from the applicant to explain how hydrology at Impacts 3 and 9B (formerly Impact 22) would be maintained. In response, the applicant updated the design to include a culvert at Impacts 3 and 22 in order to ensure hydrology was maintained. However, further consideration by the applicant determined that a culvert at Impact 3 was not appropriate due to concerns with potential backwater flooding of the adjacent property along that portion of the project limits. The applicant removed the culvert from the design and revised the application materials to identify the wetland system to be secondarily impacted (Impacts 4A and 4B) including revisions to the proposed compensatory mitigation.

When calculating the secondary impacts at Impact 6, the applicant originally asked DEQ to consider a calculation using the percent reduction in hydrology to determine the secondary impact to the remaining wetland. DEQ informed the applicant that this "proportional" calculation methodology was not appropriate, and the applicant provided updated secondary impact calculations for the whole system being secondarily impacted (Impact 6). The applicant's compensatory mitigation plan was also updated to incorporate these additional secondary impacts.

During the first two comment periods, DEQ received comments from citizens concerned that all secondary impacts were not appropriately accounted for in the draft permit. In a letter dated August 11, 2020, DEQ requested that the applicant further review remaining wetland systems onsite to determine the potential for any further secondary impacts. The applicant's September 15, 2020 updated application materials included additional waters that have the potential to be secondarily impacted, specifically including Impacts 4A, 4B, 18B, and 20B to the list of secondarily impacted waters. The applicant's compensatory mitigation plan was also updated to incorporate these additional secondary impacts.

Although secondary impact areas are considered impacted for purposes of calculating proposed impacts and mitigation requirements, there are no construction activities proposed within the secondary impact areas. To further ensure there are no additional secondary impacts associated with the project, DEQ has required onsite wetland monitoring in the draft permit at several locations within the permitted area. These include the remaining wetland areas adjacent to Impact Areas 8A, 8B, and Impact Areas 12-17. While citizens have expressed concern that off-site wetlands will also be secondarily impacted, staff believe the onsite wetland systems in close proximity of the construction and fill activities associated with the project will be the first systems impacted if secondary impacts occur. Therefore, the onsite monitoring will be indicative of potential secondary impacts to offsite wetland systems.

During the last comment period and hearing, DEQ again received comments from citizens concerned that all secondary impacts due hydrology loss had not been identified. Upon review of the application materials and proposed impacts, DEQ's best professional judgement is that all secondary impacts have been identified. As explained above, due to the relatively flat topography of the site, relatively poor draining soils, and precipitation driven wetland hydrology no additional secondary impacts are expected. Additionally, DEQ will be reviewing the periodic wetland monitoring reports the applicant will be required to submit to ensure additional waters are not being secondary impacted. If DEQ finds that additional secondary impacts have occurred, then under its compliance and enforcement authority, DEQ will require the appropriate corrective action.

To prevent secondary impacts to downstream surface waters due sedimentation, Part I.C.9 of the draft permit requires that the applicant develop, implement, and maintain erosion and sediment controls in accordance with the Virginia Erosion and Sediment Control Handbook to protect downstream surface waters from being secondarily impacted from sedimentation resulting from onsite construction activities. DEQ's Virginia Erosion and Sediment Control Program (VESCP) (9VAC25-840), Virginia Stormwater Management Program (VSMP) (9VAC25-870), and General Permit for Stormwater Discharges from Construction Activities in conjunction with the local government programs, have the primary responsibility to ensure that stormwater runoff during and post-construction are controlled. Hanover County is required by SWCL to implement the regulations as a VESCP and VSMP Authority; therefore, the County will be responsible for the receipt, review, and approval of the erosion and sediment control (ESC) and stormwater management plans. DEQ has purview over the VESCP and VSMP and may independently conduct compliance inspections under these programs and the VWP Permit Program. The proposed project will also require a General Virginia Pollutant Elimination Discharge System (VPDES) permit for Discharges of Stormwater Associated with Construction Activities (CGP). The CGP requires the permittee to conduct site inspections no less than once per seven days while construction activities are ongoing. Part I.G.2 of the draft VWP permit also requires that the applicant conduct site inspections no less than once per month at all permanent and temporary impact areas and all avoided surface waters and report any unauthorized impacts to DEQ. Additionally, DEQ conducts periodic inspections of VWP permitted sites.

6. Least Environmentally Damaging Practicable Alternative (LEDPA) Determination

Staff received several comments stating that the applicant's preferred site (Air Park site) is not the LEDPA. The comments focused on:

- *The applicant has not demonstrated that the project must be located on wetlands rather than uplands and 404(b)(1) Guidelines presume that practicable alternatives exists to special aquatic sites for a project that are not water dependent.*
- *The applicant's focus of alternative sites within Hanover County is inappropriate.*

- *The applicant's screening criteria inappropriately excludes projects greater than 3 miles from I-95.*
- *DEQ should encourage the applicant to use existing cleared sites that will not negatively impact the environment, residents, or historical areas.*
- *The applicant's main concern is building the cheapest building at the expense of human habitation, wildlife habitation, and wetlands preservation. In order to impact as few wetlands as possible on the site and purchase the minimal compensatory mitigation, the applicant moved the building away from wetlands and towards human habitation.*
- *The applicant claims that an L-shaped campus is necessary to maximize operation efficiency of cross docking and flow through, but the L-shaped layout has been proven to be less efficient and should not be applied at the alternative sites for purposes of the LEDPA analysis.*
- *The applicant approaches the alternatives analysis backwards and stated that it did not do full site design for the alternatives because of other factors relating to offsite improvements, logistics, costs, and zoning.*
- *Field generated delineations should be used for all alternative sites and the NWI should not be used.*
- *The draft permit authorizes impacts for construction of a 1.1 million square feet distribution center, but information available to the community indicates the area to be 1.7 million square feet.*
- *EPA has submitted concerns with the Alternatives Analysis to the USACE.*
- *Alternative 3 cannot be found as impracticable because the applicant abandoned Alternative 3 after another use was proposed for the site.*
- *The Letter of Intent between the applicant and property owner of Graymont (Alternative 4) means the site cannot be considered impractical.*
- *Cost analysis does not factor in the $1.5 million for infrastructure improvements provided by the County.*
- *Specific comments stated that the applicant claimed additional parking levels that would reduce proposed impacts at the proposed site are not feasible because the building heights are near maximum local zoning height allowances, but does not provide evidence of seeking a variance to those requirements.*
- *Given the most recent, incomplete wetlands impact delineation, the USACE and the applicant should amend the application to update the wetlands impacts, revise the alternatives analysis and demonstrate that the proposed project configuration on the property is the Least Environmentally Damaging Practicable Alternative ("LEDPA"), and that there are no alternative sites within reasonable proximity to the proposed project that would adversely impact fewer wetlands and related resources than the current proposal.*
- *Fair market value of the property because land is a tangible asset and historically appreciates over time and should not be considered in the costs analysis for LEDPA.*
- *Lost cost savings associated with rezoning and easement acquisitions are not appropriate for LEDPA.*
- *Several comments received stated that Alternative 3 is LEDPA. The following specific comments were provided:*
    - *DEQ's own analysis stated that Alternative 3 (Archie Cannon site) was the "Best choice for project based on wetland impacts and access."*
    - *Proposed site layout at Alternative 3 that did not optimize avoidance of impacts to surface waters making it appear to be a less reasonable alternative.*

- *Inaccurate statements by the applicant that more traffic would be encountered at Alternative 3 than the preferred site.*
- *Inaccurate statements by the applicant that Alternative 3 creates public safety risks due to location of an elementary school on the truck route yet the truck routes to and from the preferred site will pass share roads with school buses due to proximity of neighborhoods and daycare centers.*
- *False claims by the applicant that Alternative 3 does not allow for future expansion.*
- *False claims by the applicant that zoning for Alternative 3 no longer allows 'distribution center' as a permitted use and efforts to re-zone the site are not practicable. Alternative sites must be evaluated at the time of market entry.*
- *Cost associated with Hill Carter Parkway extension associated with Alternative 3.*
- *Mitigation costs for Alternative 3 is the result of a layout that does not properly minimize surface water impacts as evidenced by the layout in the JPA for the Scannell project that is larger than the proposed project. Mitigation cost for the exact Scannell layout would be $96,000 (1.48 wetland credits, 143 stream credits). The mitigation cost for a reduced footprint 1.7 million square ft. version of the Scannell layout would be $27,300 (0.78 wetland credits, 0 stream credits).*
- *Land costs for Alternative 3 are overstated as the applicant intended to carve out 52 acres from the property. It is unclear whether Wegmans intended to purchase this parcel and develop it or have it separated from the Archie Cannon site.*

Staff Response:
As part of the permit application evaluation process, 9VAC25-210-80.B.1.g of the VWP Permit Program regulations incorporate the concept of avoidance and minimization from the *Guidelines for Specification of Disposal Sites for Dredged or Fill Material,* 40 CFR Part 230, also known as the Section 404(b)(1) Guidelines, in terms of impacts to state waters and fish and wildlife resources. These federal implementing guidelines for the Clean Water Act state that the burden of proof for demonstrating compliance with the guidelines is the responsibility of the applicant, not the permitting entity. Applicants must (1) establish that avoidance of impacts to state waters, including wetlands is not practicable; (2) demonstrate that all practicable efforts to minimize unavoidable impacts to state waters, including wetlands, have been taken in project design and construction plan; and (3) provide a plan for compensation for all unavoidable impacts.

Per the VWP Permit Program regulations, the applicant must clearly state the purpose and need of the project and then demonstrate that the proposed activity, in terms of impacts to state waters and fish and wildlife resources, is the LEDPA, and must document site plan alternatives to this effect. The VWP Permit Program regulations define the following terms:

- *Avoidance* means "not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment"
- *Minimization* means "lessening impacts by reducing the degree or magnitude of the proposed action and its implementation"
- *Practicable* means "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

Note that in order to be *practicable*, an alternative must be both available to the permit applicant and capable of fulfilling the overall project purpose.

Water dependency and a project's purpose are entwined, as the project's purpose is the foundation for evaluating water dependency and, subsequently, avoidance and minimization. Water dependent projects are defined by the Section 404(b)(1) Guidelines as those activities that require "access or proximity to or siting within [the wetland] to fulfill [the project's] basic purpose." If a project is determined to be water dependent, then it is presumed that alternatives that completely avoid impacts to the aquatic ecosystem are not practicable, and the review can move to other factors to further minimize impacts prior to considering compensation. If a project is determined to be non-water dependent, then the applicant must clearly demonstrate that there are no other practicable alternatives to the proposed impacts, which is accomplished through the LEDPA analysis.

While DEQ may ask questions regarding further avoidance and minimization of surface water impacts for a project such as consideration of alternative sites, design changes, and project reconfiguration, full consideration is given to the applicant's stated purpose and need during the LEDPA analysis review. The applicant's expertise and knowledge of their industry and project type ultimately determines the feasibility of suggested changes.

DEQ received the initial JPA on December 2, 2019, to construct a distribution center. Since that time, the applicant has responded to multiple requests for additional information from DEQ, and refined the information provided with the application to more clearly demonstrate compliance with the application requirements of the VWP Permit Program regulations.

Throughout the multiple application revisions, the purpose and need as stated by the applicant has remained constant. The application describes the project's purpose is to develop a "regional grocery store distribution center (1) to serve existing retail locations, (2) relieve transportation burdens from existing supply centers, and (3) provide a base of support to serve future retail locations in the mid-Atlantic region." The initial application as well as supplemental application materials explains that the existing distribution centers in Pennsylvania and New York are nearing capacity for serving existing retail stores. Additionally, the applicant is planning to open several additional retail locations in the mid-Atlantic region and will need a distribution center that can efficiently serve these locations. The applicant provided information demonstrating that the proposed new distribution center would serve areas of Northern Virginia and the Washington D.C. metro area as well as stores in eastern and central Virginia, and North Carolina.

According to the application materials, the applicant narrowed down the location of their search to Hanover County, because "a distribution center located in Hanover County increases logistical efficiency due to the ease of access to I-95, allowing the center to not only serve stores in NC and southern Virginia, but also providing a better source of distribution for stores located in northern Virginia (Fredericksburg, Potomac, Alexandria, Lake Manassas, Chantilly, Fairfax, etc.). Servicing northern Virginia stores from the Hanover distribution center also reduces the number of trips, trucks originating from the Pottsville Center need to make through one of the most heavily congested areas of traffic in the nation, the DC Metro Area. This helps reduce the risks associated with perishable food items, while enhancing safety by decreasing road hours for operators."

The applicant's screening criteria for site selection includes:

- Proximity to Interstate 95
- Logistical efficiency to serve current and future store locations
- Ecological factors (wetland, stream, Resource Protection Areas, threatened and endangered species)

- Mitigation Cost and Credit Availability
- Zoning
- Access (Required offsite road improvements, Avoidance of congested areas)
- Ease of Utility Access (Sewer, Power, Water)
- Cost

While the screening criteria above assists the applicant in evaluating the advantages and disadvantages of particular sites, only those items related to the applicant's purpose and need, surface water impacts and practicability based on cost, technology, and logistics are permissible in the LEPDA analysis. Accordingly, the applicant revised the LEDPA analysis on multiple occasions upon receipt of comments from DEQ to ensure those factors allowed by the 404(b)(1) Guidelines were considered and documented for purposes of site selection based on LEDPA.

Throughout the application review, DEQ inquired about opportunities for further avoidance and minimization including:

- Reducing the overall proposed footprint of the warehouse
- Creating additional vertical levels to the warehouse
- Consideration that parking and road design incorporates the minimum requirements of local ordinances
- Reconfiguration of linear portions of the project (utilities and roads) to transect surface waters at the narrowest sections

In response, the applicant indicated that road alignments could not be realigned without creating additional impacts and that the utility crossings were designed to reduce the number and area of surface water impacts. The applicant also explained that the proposed building heights were nearing the allowable heights under local ordinances and additional vertical levels was not feasible.

In response to requests for reduction or changes to the footprint, the applicant indicated the facility configured in an "L" shape is needed for the most efficient operation of the distribution center. DEQ inquired about the layout to determine if the layout could be modified in order to minimize impacts on the proposed site. The applicant indicated that the "L" shaped facility designed, with one leg being for dry storage and the other for refrigerated storage, was developed by the applicant based on their experience in warehouse operations and logistics. The applicant indicated that the "L" shape building allows for the most efficient implementation of "cross docking" and "flow through" in the handling of supplies. As explained in the application materials, retail cross docking receives items from different suppliers and classifies them into trucks departing to various locations. "Cross docking" allows for "decreased storage cost, reduced fix price of the storage area, reduced shipment lead times, and increased customer satisfaction via fast delivery."

Additionally, the application explains that the "L" shape facility allows for:

- Separation of employee traffic from truck traffic
- Employee parking and administrative areas to be centrally located with a common point of entry
- Shared employee areas, and common area for equipment parking, maintenance, and offices
- Common outbound trucking operation that is shared for both buildings
- Greater ability to expand each building.

DEQ received citizen comments stating that the "L" shaped building was the applicant's desire, and is proven to not be as efficient as other designs, and should not be applied at other alternative sites for the purposes of the LEDPA analysis.

Details regarding the design, operation, and logistics of a distribution center falls under the purview of the applicant's expertise. When DEQ inquired about the facility and campus layout during the application review, the applicant provided reasonable explanations as to support the "L" shaped building design.

The initial application provided information for three sites (preferred site, Alternative 1, and Alternative 2). DEQ requested that the applicant expand the LEDPA analysis to include additional sites for consideration. At that time, DEQ learned that other sites had been evaluated by the applicant prior to submitting a VWP permit applications, and DEQ requested that those sites be incorporated into the LEDPA analysis.

The LEDPA analysis was revised to ultimately include the evaluation of five sites in Hanover County. These sites were selected based on the screening criteria mentioned above. They are identified as:

- Preferred site (Airpark)
- Alternative 1 (Flippo)
- Alternative 2 (Blenheim)
- Alternative 3 (Archie Cannon)
- Alternative 4 (Graymont)

Potential surface water impacts were evaluated for each site. A delineation for the preferred site had been confirmed by the USACE through a PJD issued on October 30, 2019, and revised February 11, 2020. Field verification of surface waters on alternative sites is not required by the VWP Permit Program regulations. For the alternative sites, the applicant used a delineation, if available. If an alternative site did not have a delineation, the applicant relied on information from the U.S. Fish and Wildlife Service's NWI and the National Hydrography Dataset to make a reasonable approximation of the surface waters.

DEQ received comments that in comparing surface water impacts, wetland delineations should be conducted at all alternative sites in order to accurately compare sites. While DEQ concurs that field verification by way of a delineation is the most accurate methodology to estimate surface waters on a site, it is not feasible to expect that the applicant would have the necessary property access to conduct a delineation at all alternative sites. Additionally, a delineation of the alternative sites is not required by the SWCL or the VWP Permit Program regulations.

DEQ also received comments that the applicant's approach to the alternatives analysis in the application was "backwards" in that the applicant had already selected the preferred site and was presenting information that "forced" the site in to being the LEDPA.

Based on Freedom of Information Act records that citizens obtained from Hanover County and the Virginia Department of Economic Development and provided to DEQ during the comment period, records indicate that the applicant considered several locations in Hanover County, conducted due diligence at sites, and engaged local officials about sites prior to submitting a VWP permit application for the preferred site. Specifically, records indicate that the applicant entered into a Letter of Intent with the Alternative 4 property owner in order to gain access to the site in order to conduct a more complete analysis of site conditions. The records also demonstrate that the applicant discussed the possibility of constructing the project at Alternative 3 with the Town of Ashland officials prior to submitting a VWP permit application for the preferred site. It is the applicant's responsibility to demonstrate that the

preferred alternative is the LEDPA. Entering into a Letter of Intent with a property owner or consideration of a potential site does not automatically mean that the site is practicable when evaluating under the LEDPA standard. The applicant's LEDPA analysis included consideration of surface water impacts followed by an evaluation of practicability taking into consideration cost, technology, and logistics in light of the overall project purpose for each alternative site that was contemplated.

During review of the initial application materials through March 20, 2020, the preferred site (Air Park) was believed to have the least amount of surface water impacts. Based on DEQ's review of the onsite and offsite alternatives, DEQ concurred that the applicant's preferred site and corresponding design layout was the LEDPA. DEQ drafted a permit for the preferred site authorizing 6.12 acres of wetland impacts. The public comment period began on March 31, 2020 and ended on April 30, 2020. Due to significant public interest, DEQ announced another public comment period and hearing. As described in the background information and item 2 above, during the initial public comment periods DEQ received substantial comments from citizens concerned that the PJD for the project did not accurately reflect the extent of surface waters on the preferred site and that the preferred site did not satisfy the LEDPA standard. Following the initial draft comment period and hearing, DEQ requested that the USACE review the PJD.

On September 15, 2020, the USACE issued a revised PJD and the applicant provided updated application materials based on the revised PJD. As a result of the increase of surface waters identified on site, the proposed surface water impacts at the preferred site increased from 6.12 acres to 14.85 acres. This increase indicated that the previous LEDPA analysis was insufficient because the preferred site no longer had the least amount of surface water impacts. In response to the increase in proposed impacts, the applicant provided additional details in the alternatives analysis taking into account cost, logistics and technology associated with construction at each site to determine if the alternative sites were considered practicable for the project. Additionally, the applicant clarified that the overall distribution center project included future build out, estimated to be 1.7 million square feet.

The applicant indicated that for Alternative 3 logistical challenges included traffic congestion with primary truck routes, and safety concerns associated with truck traffic sharing the same roads as traffic from an adjacent elementary school. DEQ received comments based on a 2019 VDOT Annual Average Traffic Report indicating that the average annual daily traffic associated with Alternative 3 is comparable to that of the applicant's preferred site. DEQ also received comments that truck routes for the preferred alternative will share roads with school traffic traveling to and from four day care centers and passing by several subdivisions. DEQ acknowledges that the logistical challenges of traffic congestion and safety may exists at both Alternative 3 and the preferred alternative. These items were not significant in the applicant's determination that Alternative 3 was not LEDPA. Several other factors as summarized in the fact sheet were used in determining LEDPA.

After several requests for additional information with questions specific to the economic analysis, the applicant provided a revised LEDPA analysis. The applicant provided information indicating that all sites evaluated met the purpose and need of the project and were considered practicable taking into consideration logistics and existing technology. However, the applicant's revised LEDPA analysis concluded that the alternative sites were not practicable based on costs.

As stated in the Section 404(b)(1) Guidelines, practicable alternatives are those alternatives that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." (40 CFR 230.10(a)(2), 9VAC25-210-80.B.1.g) Therefore, DEQ staff closely evaluated the cost analysis (Table 1) provided by the applicant which included infrastructure improvement projects associated with each site as well as site acquisition estimates and mitigation costs. The applicant also included in the analysis "lost cost savings" associated with rezoning

efforts for Alternatives 1, 2, and 3 and offsite easement acquisition for Alternative 1. The applicant explained that "lost cost savings" represents the calculated transportation and lost product costs that would be associated with continued use of the existing distribution centers if rezoning and easement acquisitions at the alternative sites were pursued.

During the application review process, DEQ also reviewed each alternative site and the preferred site using the agency's Wetland Condition Assessment Tool (WetCAT). The program is an interactive GIS tool that provides a water quality and habitat condition assessment for non-tidal wetlands in Virginia. Based on staff's review of *strictly* the wetland conditions based on WetCAT, Alternative 3 was determined to be the best location for the project when considering impacts and access. However, WetCAT is not used to determine the LEDPA because it does not take into consideration whether a site is practicable in regards to cost, logistics, and existing technology when taking into account the overall project purpose as required under the 404(b)(1) Guidelines.

Based on the information provided by the applicant associated with the construction costs, DEQ concurred that even though construction of the project on some of the alternative sites would result in fewer estimated surface water impacts, the sites were not practicable based on costs. DEQ determined that the preferred site remained the LEDPA despite the increase in proposed surface water impacts.

Table 1: Site Construction Cost Estimates Provided by the Applicant, October 2020

Updated Estimated Cost Analysis (9/28/2020)

Site	Flippo	Blenheim	Archie Cannon	Graymont	Air Park
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres
		Estimated Development Cost			
Mitigation Cost	$ 1,050,000.00	$ 1,857,800.00	$ 620,900.00	$ 283,700.00	$ 1,029,350.00
Assessed Value	$ 2,005,100.00	$ 1,865,700.00	$ 9,326,600.00	$ 1,993,000.00	$ 4,406,000.00
Extension Hill Carter Parkway	$ -	$ -	$ 10,900,000.00	$ -	$ -
Signalization of Archie Cannon Dr/RT	$ -	$ -	$ 500,000.00	$ -	$ -
Sanitary sewer relocation	$ -	$ -	$ 750,000.00	$ -	$ -
Sanitary Pump Station and FM	$ -	$ 1,800,000.00	$ -	$ 1,500,000.00	$ -
Site Retaining Wall	$ -	$ -	$ -	$ 2,800,000.00	$ -
Sliding Hill Road Improvements (curve softening)	$ -	$ -	$ -	$ -	$ 500,000.00
New Turn and Acceleration Lane Sliding Hil Road	$ -	$ -	$ -	$ -	$ 290,000.00
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ $200LF)	$ 2,800,000.00	$ -	$ -	$ -	$ -
I-95 Bore for Force Main Extension (700LF @$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
I-95 Bore for Sanitary Main Extension (700LF @$750/LF)	$ 525,000.00	$ -	$ -	$ -	$ -
Ellet's Crossing and Hickory Hill Road Improvements (Blenheim-~9,500 LF @ $2,500LF)(Graymont ~3,500LF @ $2,500)	$ -	$ 23,750,000.00	$ -	$ 8,750,000.00	$ -
12" Water Main Extension Along Hickory Hill Road (6,700 LF @$150/LF)	$ -	$ 1,005,000.00	$ -	$ -	$ -
I-95 Bore for Water Main Extension (700LF@$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
Offsite Easement Acquisition (8,300LF @ $60/LF)	$ 498,000.00	$ -	$ -	$ -	$ -
Lost Cost Savings Due Required Rezoning (est. 39 weeks X $150k/week)*	$ 5,850,000.00	$ 5,850,000.00	$ 5,850,000.00	$ -	$ -
Lost Cost Savings Due to Offsite Easement Acquisition (est. 78 weeks X $150k/week)*	$ 11,700,000.00	$ -	$ -	$ -	$ -
Est.Cost Total:	$ 18,578,100.00	$ 36,828,500.00	$ 27,947,500.00	$ 15,326,700.00	$ 6,225,350.00
Difference:	$ 12,352,750.00	$ 30,603,150.00	$ 21,722,150.00	$ 9,101,350.00	
Order of magnitude expense to preferred site	3.0	5.9	4.5	2.5	

Alternative 3 offers the least amount of surface water impacts and as such information provided for this site warranted further examination. In consideration of Alternative 3, the applicant stated that the long narrow shape of the parcel resulted in challenges for the project including the limited placement of the site using the "L" shaped design discussed above. The applicant also stated that the site does not provide sufficient area for future expansion to the 1.7 million square foot facility for which they are seeking a VWP permit.

Additionally, in the updated application materials, the applicant indicated that the Alternative 3 was no longer a feasible location due to zoning changes that occurred while DEQ was reviewing the application for the proposed project. DEQ reviewed meeting minutes from the June 10, 2020 Joint Meeting of the Ashland Town Council and Planning Commission (available at: https://ashland-va.granicus.com/MinutesViewer.php?view_id=1&clip_id=906&doc_id=1c14b001-b57f-11ea-888f-

0050569183fa). During the meeting the town council passed a motion approving changes to the zoning ordinance (ORD2020-06) that created a new industrial zoning district to "extract the more intensive uses from the M-1, Limited Industrial District, and place them into a new and more suitable zoned district, M-2, Industrial District." The Alternative 3 site was rezoned with this change to M-1. Under the M-1 designation "distribution center" is not a permitted use. The elimination of Alternative 3 as the LEDPA was not based on the rezoned designation alone. As included in the application materials, other factors that eliminated Alternative 3 include the site not meeting the project purpose and determination that the alternative was not practicable based on costs. In response to comments by DEQ, the applicant removed costs associated with rezoning as described below.

After review of the applicant's revised LEDPA analysis updated with information from September 2020 through October 2020 and including revisions to the economic analysis provided in response to public comments, DEQ concurs that the preferred site is the LEDPA. A draft permit was revised to incorporate the increase in impacts at the preferred site and another public comment period beginning October 20, 2020 and public hearing on November 19, 2020 was announced.

During the comment period, comments were received indicating that the applicant's costs analysis included costs that were not appropriate. DEQ revisited the applicant's costs analysis in light of public comments as follows:

- Property cost: The cost analysis is conducted to determine whether an alternative is unreasonably expensive, and therefore not practicable. Property purchase cost is an expense that will be incurred by the applicant in order to construct the project as the applicant does not own any of the properties. In the cost analysis submitted with the LEDPA evaluation, the applicant included the cost associated with property acquisition based on the assessed value of the site. The applicant included the property costs, i.e. assessed value, for each alternative including the preferred alternative. Using the assessed value for each property presents an equivalent examination of the property cost for each alternative that is not influenced by market variability.
- Alternative 3 for the "Extension Hill Carter Parkway": The applicant indicated that in order to construct the project on the Alternative 3 site, discussions with the Town of Ashland indicated that Hill Carter Parkway would need to be extended. Commenters provided email correspondence from Town officials indicating that there was no expectation that the applicant would pay for the road extension. In response to the comment, the applicant provided DEQ with email communications with the Town (Attachment 9). Upon DEQ's review of the public comment and documentation from the applicant, DEQ concluded that the Town did not make the road extension a condition of project approval. Instead, the Town had asked the applicant about the feasibility to assist with the cost associated with preliminary design work needed for a Virginia Transportation Partnership Opportunity Fund (TPOF) grant. As such, DEQ requested that the applicant resubmit the cost analysis with the cost for "Extension Hill Carter Parkway" removed.
- County Incentives for Infrastructure: Comments were received indicating that Hanover County agreed to reimburse the applicant for $1.5 million through a grant for infrastructure improvements related to the project. In response to this comment, DEQ requested that the applicant resubmit the cost analysis to incorporate the $1.5 million grant for infrastructure for each site.
- Lost Cost Savings (Zoning and Easements): Comments were received stating that the inclusion of costs deemed "lost cost savings" in the analysis was improper as costs associated with delays due to rezoning and easement acquisitions are not appropriate in the construction costs analysis. Upon further consideration, DEQ concurred with the comments and requested that the applicant resubmit the cost analysis removing the lost cost savings line items.
- Mitigation costs for Alternative 3: Comments were received that the applicant's estimated mitigation costs for development of the project at Alternative 3 are overestimated due to a layout

that "does not properly minimize surface water impacts." The comments refer to an application for a project on Alternative 3 known as the Scannell project that proposed construction of a 2.75 million square foot distribution center. *Note that while a JPA for the Scannell project was submitted for Alternative 3, shortly after submittal, at the request of the applicant, the agency suspended processing of the application.* Commenters estimated the surface water impacts and associated mitigation costs for the Wegmans Distribution Center based on ratios using the impact amounts and mitigation costs submitted in the Scannell JPA. The proportion methodology assumed in this comment is not appropriate. The commenter's estimates did not take into consideration the applicant's "L" shaped layout. Additionally, mitigation costs associated with stream impacts are not based on a specific ratio of impacts to compensation, but instead are based on stream scoring methodologies that take into account pre-development characteristics of the streams proposed for impacts.

- Overstated land costs for Alternative 3: Commenters provided email documentation between the applicant and the Town of Ashland during preliminary communications about Alternative 3 indicating that the applicant intended to purchase a smaller parcel, "preserving approximately 52 acres for mixed-use development." DEQ reviewed the email communications that occurred relative to "preserving approximately 52 acres for mixed-use development" of the Alternative 3 parcel. The cost information presented by the applicant indicates the need to purchase the various alternatives in their entirety. Subdivision and future land use decisions of any of the alternatives is speculative and subject to change, and were not provided or requested for purposes of the cost analysis.

In response to citizen comments received by DEQ described above and at DEQ's request, the applicant provided a revised cost analysis (Table 2). According to the applicant, after revising the costs analysis, the preferred site remains the LEDPA because Alternatives 2, 3, and 4 have cost estimates significantly greater than the preferred site and are therefore not practicable based on cost. Alternative 1 is estimated to have approximately the same impacts as the preferred site and construction costs are approximately 90 percent of the costs to construct at the preferred site. The applicant explained that Alternative 1 requires rezoning and acquisition of offsite easements and states that "the time required to acquire the property, conduct thorough due diligence, rezone (if possible), and acquire the necessary offsite easements (if possible), represents a greater risk and expense to the Applicant than the estimated $847,250 difference" and therefore Alternative 1 was not chosen as the preferred alternative.

In accordance with the federal 404(b)(1) Guidelines, costs may be considered by an applicant in determining the LEDPA for purposes of eliminating a site when the cost to construct the project at that site is not considered practicable. There is no requirement in the 404(b)(1) Guidelines, SWCL, or VWP Permit Program regulations that requires the LEDPA to be the least expensive alternative.

Table 2: Site Construction Cost Estimates Provided by the Applicant, December 2020

Updated Estimated Cost Analysis (12/21/2020)

Site	Flippo	Blenheim	Archie Cannon	Graymont	Air Park
Wetland and Waters Impacts	app. 15 acres	app. 16.4 acres & app. 2,366 lf stream	app. .5 acres & 1,953 lf stream	app. 1.1 acres and 689 lf stream	14.8 acres
Estimated Development Cost					
Mitigation Cost (based on $35,000/wetland cr. and $300/stream cr.)	$ 1,050,000.00	$ 1,857,800.00	$ 620,900.00	$ 283,700.00	$ 1,029,350.00
Assessed Value	$ 2,005,100.00	$ 1,865,700.00	$ 9,326,600.00	$ 1,993,000.00	$ 4,406,000.00
Signalization of Archie Cannon Dr/RT	$ -	$ -	$ 500,000.00	$ -	$ -
Sanitary sewer relocation	$ -	$ -	$ 750,000.00	$ -	$ -
Sanitary Pump Station and FM	$ -	$ 1,800,000.00	$ -	$ 1,500,000.00	$ -
Site Retaining Wall	$ -	$ -	$ -	$ 2,800,000.00	$ -
Sliding Hill Road Improvements (curve softening)	$ -	$ -	$ -	$ -	$ 500,000.00
New Turn and Acceleration Lane Sliding Hil Road	$ -	$ -	$ -	$ -	$ 290,000.00
Sanitary Trunk Sewer Extension Along Little River (14,000LF @ $200LF)	$ 2,800,000.00	$ -	$ -	$ -	$ -
I-95 Bore for Force Main Extension (700LF @$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
I-95 Bore for Sanitary Main Extension (700LF @$750/LF)	$ 525,000.00	$ -	$ -	$ -	$ -
Ellet's Crossing and Hickory Hill Road Improvements (Blenheim-~9,500 LF @ $2,500LF)(Graymont ~3,500LF @ $2,500)	$ -	$ 23,750,000.00	$ -	$ 8,750,000.00	$ -
12" Water Main Extension Along Hickory Hill Road (6,700 LF @$150/LF)	$ -	$ 1,005,000.00	$ -	$ -	$ -
I-95 Bore for Water Main Extension (700LF@$500/LF)	$ -	$ 350,000.00	$ -	$ -	$ -
Offsite Easement Acquisition (8,300LF @ $60/LF)	$ 498,000.00	$ -	$ -	$ -	$ -
County Infrastructure Incentive $1.5M	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)	$ (1,500,000.00)
Brown Grove Regional Trunk Sewer	$ -	$ -		$ -	$ 1,500,000.00
Est.Cost Total:	$ 5,378,100.00	$ 29,478,500.00	$ 9,697,500.00	$ 13,826,700.00	$ 6,225,350.00
Difference:	$ (847,250.00)	$ 23,253,150.00	$ 3,472,150.00	$ 7,601,350.00	
Order of magnitude expense to preferred site	0.9	4.7	1.6	2.2	

7. Chesapeake Bay Preservation Act

Staff received comments regarding inaccurate assessment of resources onsite regulated by the Chesapeake Bay Preservation Act (CBPA). The comments focused on:

- *The State Water Control Board is responsible for overseeing the implementation and compliance of the CBPA and cannot approve the VWP permit since the CBPA analysis does not correctly identify RPA on the proposed site.*
- *The Resource Protection Areas (RPA) on the site have not been appropriately identified.*
- *Because the property is located within a Resource Management Area (RMA), the applicant must disturb as little land as possible within CBPA protected areas, minimize impervious cover, and preserve indigenous vegetation to the maximum extent possible.*
- *DEQ and the applicant have not appropriately analyzed whether on-site wetlands constitute an RPA.*
- *The applicant has not complied with the VWP program because it has prevented the Commonwealth of Virginia from assessing the proposed development's impacts under the Chesapeake Bay Preservation Act.*
- *DEQ should consider immediately implementing an audit of Hanover County's CBPA program to ensure the locality is properly meeting the requirements of the CBPA.*
- *Eastern portion of the proposed site drains to Kersey Creek, where there are prominent wetlands within the designated RPA.*
- *Drought conditions may have potentially altered the connectivity of Wetland 13 to Totopotomoy Creek leading to an incorrect conclusion that the wetland is not an RPA.*
- *During the Federal Consistency Certification review, Hanover County provided DEQ with maps that omit portions of the Air Park site and do not identify all relevant Chesapeake Bay Preservation Areas.*

Staff Response:
While 9VAC25-210-80.B.1.i.(5) of the VWP Permit Program regulations requires applicants to submit the limits of resources designated as CBPA, designation of features protected under the CBPA statute and attendant regulations does not fall within the statutory and regulatory authority of the VWP Permit

Program. Consideration of the VWP permit for the proposed project by DEQ or the State Water Control Board is independent of their oversight of local government CBPA programs.

Localities in Tidewater Virginia, including Hanover County, are required to comply with the Chesapeake Bay Preservation Area Designation and Management regulations through development and implementation of a local program in accordance with 9VAC25-830. Oversite of these local programs to ensure that they are being properly implemented is the responsibility of the DEQ Office of Local Government Assistance Programs (OLGAP). Local governments are responsible for reviewing specific projects for compliance with the CBPA requirements. OLGAP does not conduct project specific review, but ensures the proper administration of the program by conducting periodic local program reviews. If administration of the local government's program is determined to be inconsistent with the statutory and regulatory requirements, OLGAP requires corrective action by the local government and establishment of schedules of compliance, as necessary.

In December 2019, the OLGAP staff were provided the opportunity to review and comment on the proposed project under the Federal Consistency Certification (FCC) review. OLGAP's review of projects as part of the FCC review is not meant to provide site specific determination of RPA and RMA. In addition to identifying the general requirements of the CBPA program, OLGAP comments stated, "It is important to note that in accordance with the Act, *this is a private development project that must be reviewed and approved by Hanover County*. As part of this process, the applicant must coordinate with the County to identify all parts of the site that may require designation as RPA and any area(s) of potential encroachment into the RPAs…" (e*mphasis added*). Designation of the RPA for this site specific project is the responsibility of the local government.

8. Flooding and Stormwater Management

Staff received comments on potential flooding from and stormwater management associated with the proposed project. The comments focused on:

- *Existing flooding being exacerbated by the increase in imperviousness.*
- *Importance of wetlands in filtering of pollutants and to reducing flooding and runoff from upland areas.*
- *Permanently altering water flow to all surrounding neighborhoods that already have problems with standing water issues after rainfall events.*
- *Concerns with how water quantity and quality would be impacted by the project.*
- *Concerns that the applicant will be changing runoff patterns such that all of the runoff will be directed to Totopotomoy and whether or not the creek can handle rainfall from 100-year storm events.*
- *Need for more studies to demonstrate culvert adequacy or adequate outfall requirements of the Erosion and Sediment Control Program and how the project will effect drainage patterns in nearby neighborhoods.*
- *No determination or documentation of backflow or flooding potential.*
- *Concerns that local streams will not be able to handle the run off from the proposed project.*
- *Request to require the applicant to use a permeable material for any paved surfaces.*

Staff Response:
The wetlands proposed for impact inherently function to absorb and store runoff during storm events. The VSMP accounts for changes in stormwater runoff caused by the changes in land cover associated with

development activities. The VSMP regulation requires that the volume, velocity, and peak discharge rate of stormwater runoff be controlled. Project developers are required to demonstrate that post-development stormwater management replicates or improves upon its contributing share of the existing pre-development runoff hydrology, and the project cannot cause additional flooding if flooding exists in the development condition. The VSMP does not require the proposed development to alleviate existing flooding if it is already present in the system. Hanover County operates a VESCP and VSMP per § 62.1-44.15:54 and § 62.1-44.15:27 of the Virginia Erosion and Sediment Control Law and Virginia Stormwater Management Act, respectively. Therefore receipt, review, and approval of the ESC and stormwater management plan(s) are completed by the local government program authority. Additionally, no land disturbance is authorized until the plans are approved by local government program authority and coverage under the General VPDES Permit for Discharges of Stormwater Associated with Construction Activities is authorized. Under these programs, the local government is responsible for conducting periodic inspections of the site.

In order to meet the requirements of the VSMP, post-development stormwater quantity must comply with channel and flood protection technical requirements. Compliance can be met by a combination of land use cover types and best management practices. DEQ does not have the authority to require that project proponents implement a particular type of stormwater best management practice, act as the plan reviewing authority, or act in a design on consultative capacity on behalf of the proposed project proponent. DEQ may independently conduct compliance inspections under these respective programs.

9. <u>Threatened and Endangered Species and Wildlife Habitat Loss</u>

Staff received comments about the importance of wetlands for wildlife habitat and potential for threatened and endangered species to exist on the site. The comments focused on:

- *The endangered spotted turtles that live in the wetlands that once incorporated much of central VA have been reduced to two small colonies including proposed site.*
- *Development of the site will displace wildlife including owls, hawks, deer, rabbits, frogs, eagles, foxes, opossums, seasonal birds, snakes, dragonflies, wild flowers, grasses, and mosses.*
- *Development of the site will push wildlife on to roadways and subdivisions and create problems for nearby neighborhoods.*

Staff Response:
A fundamental component of the VWP Permit Program's evaluation of any proposed project impacting surface waters is coordination with other State agencies regarding potential impacts to threatened or endangered species that may exist on the site or nearby. As required during the application process, DEQ coordinated with the Virginia Department of Wildlife Recourses (DWR), Virginia Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC) and Virginia Department of Health –Office of Drinking Water (VDH-ODW) to determine if the project would potentially impact threatened and endangered plants, insects, animal species and/or public health. DEQ staff coordinated with these agencies both after receiving the initial application and after receiving application materials revised as a result of revisions to the delineation confirmed by the USACE. No determinations of impacts to State protected species were received from these agencies as a result of this coordination. Additionally, DCR reviewed information on *Helonias bullata* (swamp pink), currently listed as a federally threatened and state endangered species, provided by the applicant and concurred with the applicant's conclusion that the species was absent from the site and that the habitat was not sufficient to maintain it.

10. <u>Effects on downstream surface water quality</u>

Staff received comments about the effects of the proposed project on downstream surface waters. The comments focused on:

- *Concerns that the proposed project will contribute to significant impairments of state waters and fish and wildlife resources.*
- *Totopotomoy Creek is impaired for recreational use and there has been no consideration of the impairment or need to develop a total maximum daily limit (TMDL) wasteload allocation for the project.*
- *No consideration given to how the project will affect the Chesapeake Bay TMDL.*
- *Need to establish sediment and nutrient wasteload allocations for discharges from the project.*
- *Eliminating vegetation smaller than 5 inches in diameter in the buffers will cause soil to be eroded and carried downstream worsening the water quality downstream.*
- *Water quality of the remaining wetlands will be affected by constant light and pollution after removal of buffer vegetation.*

Staff Response:
The proposed project is located in the Pamunkey/York River Basin watershed and the larger Chesapeake Bay watershed. It will discharge to unnamed tributaries of Totopotomoy Creek (south), Campbell Creek (north), and Kersey Creek (southeast). All three water bodies are part of the Pamunkey River *E. coli* TMDL study area, however, only Kersey Creek is impaired for *E. coli*. There are no impairments identified for Campbell Creek or the upper Totopotomoy Creek main stems or the associated tributaries. Kersey Creek is also impaired for pH, although the impairment is suspected to be from naturally occurring conditions, and it is classified as Category 5C until further analysis can be performed.

Discharge characteristics from the proposed distribution center both during construction and operation are not expected to introduce bacteria loads into the downstream waters. Sanitary waste from the facility will be discharged to a municipal wastewater treatment plant. Therefore, no *E. coli* wasteload allocation for the facility is required.

All stormwater from impervious surfaces at the site are proposed to be routed through stormwater management facilities. Effective July 1, 2014, the Virginia Stormwater Management Program establishes a maximum loading rate for post-development stormwater runoff from new construction activities of 0.41 pounds total phosphorus per acre per year. This loading rate is considered protective of local waters as well as the Chesapeake Bay watershed by the VSMP. Project proponents are required to demonstrate compliance with this criteria through a combination of land use cover types and/or best management practices (BMPs) in accordance with 9VAC25-870-65.

The applicant is proposing to construct two BMPs (retention ponds) to control water quality and quantity from the increase in impervious surfaces from the site. Runoff from all other land covers in the project area are proposed for sheet flow from the property. As previously mentioned, the local government is responsible for review and approval of stormwater management plans.

Conditions in the draft permit are based on requirements in the VWP Permit Program regulations which were developed to protect downstream water quality during construction. The draft permit contains the following requirements to protect surface water quality:

- Part I.C.1 requires that the project activities be conducted in a manner that minimizes impacts to instream beneficial uses.
- Part I.C.9 requires that erosion and sediment controls be designed, installed, and maintained during the life of the construction activities.
- Part I.C.10 and 11 prohibit construction or waste materials from entering surface waters.
- Part I.C.12 requires that the permittee take measures to prevent and contain spills of pollutants.
- Part I.F.1 and 3 requires the construction of stormwater BMPs be constructed, maintained, and operated in manner that prevents erosion and downstream deposition.

In addition, land disturbing activities associated with the project must be covered under the VPDES Construction Stormwater General Permit (CGP), which requires installation of stormwater controls and implementation of a stormwater pollution prevention plan to prevent sediment and other pollutants associated with construction sites from being discharged in stormwater runoff. Both the draft VWP permit and the CGP require period inspections of the site. After construction, if the proposed industrial activities at the site fall into certain standard industrial classification codes the discharge of stormwater associated with industrial activities through a point source or storm sewer system will also be required to obtain a VPDES Industrial Stormwater General Permit (VAR05). The need for an industrial stormwater permit is evaluated through the VPDES program.

11. Historic Resources

Staff received comments regarding historic resources on the proposed site. The comments focused on the following:

- *Concerns about the destruction of potential archeological sites.*
- *Historical resources, including unmarked graves, the Merry Oaks Tavern associated with Patrick Henry, and the Brown Grove School, are located at the proposed project site.*
- *Historical resources on site are eligible for listing on the National Register of Historic Places.*
- *DEQ and the Board cannot appropriately determine whether to issue a permit until the Section 106 review is completed.*
- *DEQ should ensure that review of the proposed project by the USACE under Section 106 of the National Historic Preservation Act is complete before issuing the permit.*
- *DEQ was made aware of human remains on site by a citizen and neglected to establish a record of the conversation until 7 weeks after the communication.*
- *Granting the permit would supersede the current local "Do-Not-Disturb" proffer condition in place to protect unmarked graves.*

Staff Response:
Neither the SWCL nor VWP Permit Program regulations require an applicant to address historic resources prior to obtaining a VWP permit. The USACE must coordinate review of historic resources during their permitting process in accordance with Section 106 of the National Historic Preservation Act which includes coordinating with the Virginia Department of Historic Resources (DHR). DEQ has no purview in the USACE Section 106 coordination process. When information regarding historic resources is reported to DEQ, DEQ provides that information to the USACE. In response to DEQ's riparian land owner notification letter, a citizen reported to DEQ that historic human remains were on the proposed site. DEQ advised the citizen that the information should be reported to the USACE. Additionally, immediately following the conversation with the citizen, DEQ called the USACE project manager working on the parallel 404 permit for the project and relayed the information.

12. Environmental Justice

Staff received comments stating that DEQ failed to conduct a proper environmental justice assessment for the proposed draft permit. The comments focused on:

- *Request for DEQ to consult with the Virginia Council on Environmental Justice and to ensure an environmental justice study be conducted prior to any permit issuance.*
- *The permit process did not adequately consider the disparate environmental justice impacts caused by this project on the Brown Grove community and its neighbors.*
- *The continual encouragement of development on the Brown Grove community will be compounded by the proposed project.*
- *The project will disturb and displace remains of Brown Grove ancestors.*
- *Hanover County's Comprehensive Plan that includes future expansion of New Ashcake Road through Brown Grove needs to be considered along with the distribution center and the cumulative impacts of industrial encroachment issues Brown Grove has suffered.*
- *Providing state and local grants for the project, but not incentives to members of the Brown Grove Community will destroy the Brown Grove Community.*

Staff Response:
On January 22, 2019, Governor Northam issued Executive Order 29 (EO29) establishing the Virginia Council on Environmental Justice. The EO29 order charged the Council with making recommendations for consistent integration of environmental justice considerations throughout all state programs, regulations, policies and procedures. The Council is tasked with consideration of Environmental Justice across state programs, but is not tasked with reviewing individual case decision before various state agencies.

During the 2020 legislative session, the General Assembly passed, and the Governor signed into law, legislation the makes environmental justice a policy of the Commonwealth, as well as DEQ specifically, effective July 1, 2020. *Environmental Justice* is defined in §§ 2.2-234 and 10.1-1182 of the Code of Virginia as "*the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.*" *Fair treatment* is defined in § 2.2-234 as "*the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.*" *Meaningful involvement is defined in* § 2.2-234 as "*the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.*"

The application for this project was received seven months before the effective date of the legislation. While the legislation establishes a clear policy for the Commonwealth and DEQ, it lacks specificity with regard to regulatory and procedural implementation. The current regulatory process does not include requirements that speak directly to aspects of the Environmental Justice legislation, however, DEQ took additional steps beyond regulatory requirements in an effort to further address Environmental Justice concerns.

During the initial public comment period for the draft permit, DEQ became aware of Environmental Justice concerns raised with siting of project at the preferred site located next to the Brown Grove

community. Brown Grove is a historically African-American community founded by freedmen after the Civil War. The founding matriarch of the community was Caroline Morris from whom many of the community residents are descendants.

DEQ reached out to community leaders including Pastor Beeachaum, of the Brown Grove Church located across the street from the applicant's preferred site, and Mr. Charles Morris, descendent of Carolyn Morris. DEQ indicated to Pastor Beechaum and Mr. Morris the agency's desire to hold a conference call with members of the community to discuss the proposed project and application being reviewed by DEQ. A conference call was held with several interested parties on June 17, 2020, prior to the announcement of the first public hearing. DEQ staff explained the statutory and regulatory authorities under the VWP Permit Program, the VWP permit application review process, and opportunities to participate in the upcoming draft permit public comment period and hearing. DEQ also listened and responded to concerns of the community, many of which were outside of the purview of the VWP Permit Program such as concerns regarding ground water well contamination, traffic, and air emissions. See Attachment 10 for a memorandum documenting the communications. During the call, participants also suggested that DEQ place the announcement for the public comment period and hearing in publications other than the *Richmond Times-Dispatch* in order to reach more community members. DEQ followed up with additional publications in the *Richmond Free Press* and the *Mechanicsville Local* newspapers. DEQ also offered to provide handouts of flyers to the church, however, the church leaders indicated that was not necessary.

During the initial public hearing comment period, many of the Brown Grove community members submitted written or provided oral comments that were taken into consideration. Comments from the Brown Grove community, and those from other interested parties, specifically regarding the surface waters determination were given full consideration which resulted in DEQ requesting the USACE to review the PJD issued for the proposed site. Following revisions to the PJD and submittal of new application materials, DEQ considered the significant public interest of the Brown Grove community and other residents in deciding to hold a concurrent second public hearing and comment period. DEQ communicated with all interested parties including those individuals from the Brown Grove community to disseminate information about the draft permit and upcoming public participation.

In keeping with the Commonwealth's Environmental Justice policy of the "fair treatment and meaningful involvement of every person" comments and concerns from all commenters on the draft permit received by the agency were considered equally.

The processing of the application and drafting of the permit conformed to the statutory and regulatory requirements and applies to all requests for a VWP permit application regardless of location or extent of surface water impacts proposed.

DEQ has also learned the applicant held a meeting with members of the Brown Grove community on February 7, 2020, to listen to and address concerns of the community. Seven members of the community participated and raised several concerns including traffic and safety at the proposed employee entrance, buffers around the site, noise from truck traffic, groundwater contamination, truck interference with the Brown Grove Church PA system, and hiring practices. The applicant followed up with the meeting participants in an email dated February 14, 2020, to memorialize the discussions and provided the documentation to DEQ with the application materials.

This permit authorizes only impacts to wetlands on the property owned by the applicant. Issues such as traffic, noise, and air pollution are outside the purview of this permit and the VWP Permit Program. In addition, this permit contains provisions for compensatory mitigation to ensure that the authorized impacts results in no net loss of wetlands acreage or function. The permittee must comply with all other

federal, state, and local laws and ordinances. More specifically, as described in sections 5, 8, and 10 above, compliance the Virginia Erosion and Sediment Control Program, post-development Stormwater Management Program, and Construction Stormwater General Permit require that the applicant manage stormwater, flooding, and construction related sediment onsite. As a result, the surface water impacts authorized by this permit will not impose a disproportionate share of any negative consequences on any group of people.

DEQ commissioned a comprehensive Environmental Justice Study by SKEO Solutions, Inc. and Metropolitan Group with support from Ebony Walden Consulting which was completed in October 2020. This report addresses the challenging nature of implementing Environmental Justice into the myriad of DEQ's environmental statutory and regulatory landscape and includes specific recommendations for consideration, evaluation, and implementation over the next three years and beyond. Responding to the consultant's recommendations will take time, and it should be noted that many of the recommendations will require increased resources, staffing, or even new legislative authority for the agency. Still others will require community involvement and collaboration to ensure success. That is why the agency will move quickly to act on the recommendation to create an Office of Environmental Justice and hire an Environmental Justice Director. DEQ has developed an Environmental Justice Initiative document dated October 16, 2020 which outlines the immediate steps the agency will be taking.

Concerns regarding the disbursement of grant funding or incentives and future comprehensive plans of the locality are outside of the purview of the VWP Permit Program.

13. <u>Industrial Stormwater Permitting</u>

Staff received comments regarding VPDES industrial stormwater permitting requirements. The comments focused on:

- *Failure of the applicant to apply for an industrial stormwater permit.*
- *Because the property is zoned M-2c (light industrial with condition), an industrial stormwater permit is required with appropriate TMDL wasteload allocation and monitoring requirements and has not been issued.*
- *The proposed uses of the facility meet the Standard Industrial Classification codes definitions for industrial activities and requires an industrial discharge permit.*

Staff Response:
The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. Permitting of stormwater discharges associated with industrial activities falls under the authority of the VPDES Program. Typically permitting for industrial stormwater occurs at a later stage in site development but prior to the site becoming operational. The VPDES industrial stormwater permit requirements are applicable based on the standard industrial classification codes of the proposed operational activities at the facility, and not the local zoning designations. Upon receipt and a review of a permit application for an industrial stormwater permit, the DEQ VPDES Program will review the need for monitoring, TMDL wasteload allocations, and other requirements. Note that if the applicant demonstrates that the industrial activities are not exposed to stormwater, DEQ may issue a *No Exposure Certification* approval in accordance with the VPDES regulations.

14. <u>Impacts to ground water wells from filling of wetlands and contamination of ground water</u>

Staff received comments regarding concern that groundwater wells used as a drinking water supply for nearby residents may run dry from the proposed project or become compromised due to contaminated stormwater runoff from diesel fuel from the trucks entering and leaving the proposed facility.

Staff Response:
The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. The applicant is not proposing to produce any product with the potential to infiltrate into groundwater or locating any fueling stations or fuel storage tanks on the site. Information from the applicant also indicates that the impervious surface runoff will be routed through stormwater conveyances to the onsite stormwater facilities.

Additionally, review of the soil data on the property indicates the presence of a substantial clay layer in the soil profile that suggests a perched water table on the property. As such, the hydrology of onsite wetlands appears to be precipitation driven, and not from groundwater.

Based on this information, groundwater is not expected to be affected from the proposed project.

15. <u>Noise, Light Pollution, Air Pollution, and Traffic</u>

Staff received comments regarding noise, light, and air pollution from operation of the proposed project and diminished air quality. The comments focused on:

- *Impact of the noise, traffic, light pollution and other pollutions that will be caused by the facility.*
- *Concerns about transport refrigeration unit (TRU) diesel fuel emissions from trucks entering, leaving, and sitting at the facility.*
- *Concerns regarding air pollution from tractor trailers idling in traffic congestion.*
- *Concerns about ammonia leaks from the proposed project's refrigeration units.*
- *Concerns that existing roads are not appropriate for heavy traffic associated with proposed facility.*
- *Concerns regarding the lack of alternative truck routes available for use by tractor trailers.*
- *Concerns for increased traffic congestion and accidents due to semi-truck traffic associated with the facility.*

Staff Response:
The VWP Permit Program focuses on impacts to surface waters from construction activities and not ongoing operations once a facility is built. Concerns regarding noise, light, and air pollution as well as traffic associated with the operation of the facility are outside of the VWP Permit Program's regulatory authority. Additionally, emissions associated with TRU emissions are not regulated by DEQ.

16. <u>Coordination</u>

Staff received comments regarding inadequate coordination with federal agencies and tribes. The comments focused on:

- *DEQ should consult the National Park Service (NPS) who oversees Totopotomoy National Battlefield Park downstream from the proposed facility.*
- *DEQ was advised in February 2020 to consult with Virginia Indigenous nations and tribes and the agency has taken no action.*

Staff Response:

As required by statute and regulations, DEQ coordinates review of the proposed project with the DWR, DCR, VMRC, and VDH-OWD. While DEQ does occasionally consult with Virginia Indigenous tribes during the review of projects, there is no VWP Permit Program statutory or regulatory requirement to do so. There is also no requirements to coordinate with the National Park Service. The proposed project is approximately 30 miles upstream from the Pamunkey and Mattaponi Indian Reservation and 6 miles upstream from the Totopotomoy National Battlefield Park. Given the distance from the project to the reservations and the park and that the project is not expected to impact downstream water quality, no tribal or NPS consultation was initiated. It should be noted, however, that tribal consultation is required under the Section 106 of the National Historical Preservation Act coordination conducted by the USACE.

17. <u>Federal Consistency Certification Review</u>

Staff received comments regarding the inadequacy of the Federal Consistency Certification review. The comments focused on:

- *Inaccurate statement by the applicant that the proposed project was not an industrial operation and an industrial permit is not required.*
- *The Federal Consistency Certification review was based on inaccurate surface water impacts totals.*
- *Hanover County's review failed to identify existing proffers for the proposed site.*
- *Incomplete parcel information provided by Hanover County to DEQ staff for purpose of CBPA review.*

Staff Response:

Federal agency actions, including licensing or permitting, that affect the state's coastal resources or uses must be consistent with the enforceable policies of the Virginia Coastal Zone Management (CZM) Program. DEQ acts as the lead agency to disseminate and receive comments from other agencies. Because the proposed project must obtain a federal permit for impacts to surface waters in accordance with Section 404 of the Clean Water Act, the applicant submitted a FCC to DEQ's Office of Environmental Impact Review dated November 18, 2019. After public notice and review by DEQ and appropriate agencies, DEQ issued a letter dated February 5, 2020, concurring that the project is consistent with the enforceable policies of the CZM Program. Specifically, conclusions of the FCC review stated:

- *Wetlands Management: "Provided adherence to any applicable permits or authorizations, the project would be consistent with the wetlands management enforceable policy of the Virginia CZM Program."*
- *CBPA: "As long as the county's review of the proposal is complete, a determination that it conforms with the county's CBPA Program is made, and the county's approval obtained, the project would be deemed to be consistent with the Chesapeake Bay Preservation Act."*

Based on the concurrences, DEQ has concluded that the project does not require additional FCC review.

Additionally, while the FCC states that the project is not industrial in nature and does not require an industrial VPDES permit from DEQ, if activities at the facility meet one or more of the standard industrial classification codes regulated under the VPDES General Permit regulation for Discharges of Stormwater Associated with Industrial Activities, a discharge permit will be required. Note that if the applicant demonstrates that the industrial activities are not exposed to stormwater, DEQ may issue a *No Exposure Certification* approval in accordance with the VPDES regulations.

18. USACE's Application Review and Permitting Process

Staff received comments regarding the need for an Environmental Impact Statement (EIS) for the proposed project. The comments focused on:

- *Requests for USACE to hold a public hearing on the permitting process.*
- *The USACE prematurely determined that no EIS was necessary under the National Environmental Policy Act.*
- *DEQ should encourage the USACE to require an EIS.*

Staff Response:
The VWP Permit Program has no legal authority under either § 62.1-44.15:20 of the Code of Virginia or the VWP Permit Program regulation 9VAC25-210-10 *et seq*. to require preparation of an EIS for any project. The requirement for an applicant to prepare an EIS is a decision by the federal action agency.

19. Application Processing

Staff received comments expressing concern on how DEQ has processed the application for the project. The comments focused on:

- *Original application was submitted and signed by Hanover County Economic Development.*
- *Continued revision of application materials by the applicant and acceptance by DEQ rather than DEQ denying the permit application.*
- *No independent review of the information presented in the application has been conducted.*
- *The applicant and their representatives have intentionally presented incorrect information in the application material and signed the certification statement in the application.*

Staff Response:
DEQ has no authority to dictate what legal entity applies for a VWP permit. In this case, DEQ received an initial application from *Hanover County Economic Development* for *Project Tiger* on December 2, 2019. After Virginia Governor Northam's announcement of the project, updated application materials were provided to DEQ updating the name of the applicant to *Wegmans Food Markets, Inc*. and name of the project as *Wegmans Distribution Center*. Changes in applicant, owners, and authorized agents are not uncommon during the application review process or after a VWP permit has been issued.

In response to concerns regarding the number of application revisions submitted by the application, there are no statutory or regulatory limitations in SWCL or the VWP Permit Program regulations on the number of times DEQ may request additional information or an applicant can submit revised or updated information. It is not uncommon for DEQ to request additional information multiple times during the application review process or accept updated information from the applicant. With each request for additional information, DEQ is identifying that not enough information has been provided to reach a permitting decision or that the project as proposed does not meet the requirements of SWCL or the VWP Permit Program regulations. The submittal and review process continue until such time that the application requirements are met and DEQ has enough information to reach a permitting decision.

DEQ received comments from citizens concerned that the applicant purposely provided false information in the application materials, however, DEQ has no evidence that this is the case.

20. Public Participation Process and Document Availability

Staff received comments expressing concerns about the public participation process and the availability of application materials for the public. The comments focused on:

- *Problems with finding project information on DEQ's website.*
- *Inadequate public access to relevant documents pertaining to the draft permit throughout the process resulting in a "compromised" public participation process.*
- *Public notices in newspapers and DEQ's website is insufficient and draft permit comment period notices should be posted on the Virginia Regulatory Town Hall website.*
- *Objections to DEQ holding the public hearings on July 20, 2020 and November 19, 2020 as electronic meetings and the inability for stakeholders to be physically present.*
- *Requests for extension of the public comment period and public hearing until after the governor lifts the Stay at Home Order.*
- *DEQ's decision to hold the public hearing electronically failed to comply with the Virginia Freedom of Information Act authorization for electronic meetings because the purpose of the meeting was not to address the emergency.*
- *Electronic public hearing did not adequately allow for full participation in the community due to lack of high speed internet and damaged cell tower.*
- *Poor audio quality during public hearing and technical difficulties.*
- *Public notices announcing the public hearings did not provide a "reference to the rules and procedures to be followed at the public hearing" as required by 9VAC25-210-170.C.9.*
- *Several instances where information should have been made available via FOIA request and were not.*

Staff Response:
Once DEQ determined that there was significant public interest in the proposed project, documents relevant to the application review and permitting process were posted on DEQ's website including the application materials, draft permits, proposed impact maps, and fact sheets. As new or revised application materials were received, they were also added to the website. The web address to view the documents was included in the public notices and also shared with citizens through email correspondence. DEQ also posted the transcripts from the public hearings, and provided the transcripts to those interested parties that registered to attend through the GoToWebinar platform. During the last comment period documents were not available for a brief time (less than 12 hours) when DEQ's website was transitioned to a new platform. However, when staff identified the issue, action was taken to immediately resolve the problem and have access to the documents restored.

The public notices for the draft permit public comment periods and public hearing were posted on the DEQ website in addition to publication in the *Richmond Time-Dispatch.* Notices for public meetings and hearings related to permit actions are posted on Virginia Regulatory Town Hall. Public notices announcing comment periods on draft permits that do not include a public meeting or public hearing are not announced through the Virginia Regulatory Town Hall.

DEQ received comments that the public notice for the hearing did not include "a reference to the rules and procedures to be followed at the hearing" as required by 9VAC25-210-170.C.9. The public hearing notice explained in order to make oral comments the GoToWebinar platform needed to be used, provided instructions on how interested parties could register for the electronic hearing, and directed anyone interested in making a statement during the hearing to follow the instructions provided during the hearing. The rules and procedures for public hearings are set forth by the Hearing Officer, a member of the State Water Control Board. Pursuant to § 62.1-44.15:02.K of the Code of Virginia, the Hearing Officer has the

authority and discretion to establish the methods and procedures for presentation of oral comments and written materials, including imposing reasonable time limits for oral comments.

SWCL and the Virginia Administrative Code require that the Board and/or DEQ perform certain tasks pertaining to permit processing within mandated timeframes. In order to fulfill these duties, the public hearings were held as electronic communications meeting in compliance with the Item 4-0.01G of Chapters 1283 and 1289 of the 2020 Acts of Assembly, as applicable. As a result of the March 12, 2020 declaration of a State of Emergency due to Novel Coronavirus (COVID-19), Executive Order -51 (EO-51), subsequent executive orders EO-53 and EO-55, and in keeping with Governor Northam's temporary restrictions and stay at home and safer at home directives, the public hearings were held via electronic communications. Item 4-0.01G of Chapters 1283 and 1289 of the 2020 Acts of Assembly established procedures by which public bodies can conduct public business by electronic meetings when it is deemed unsafe or not practicable to do so in person. In deciding to hold the hearings electronically, DEQ took into consideration factors such as health and safety of the public and staff, the inability to implement social distancing in light of the number of interested parties, and the Governor's orders limiting the number of people gathering.

Anyone wanting to provide the Board with oral comments were able to do so via the GoToWebinar platform. Additionally, for anyone who wanted to participate in a listen-only mode, access was made available through a dedicated phone line. To assist the public with technical difficulties, a designated DEQ staff's contact name, email, and phone number were displayed on the Webinar screen through the entirety of the proceeding. For anyone that was not able to participate in the hearing or choose not to make oral comments, the agency accepted comments for 15 days following the hearing.

The public participation process for the draft permit has been conducted in accordance with the SWCL and the VWP Permit Program regulations.

21. <u>Transparency and Political Pressure</u>

Staff received comments expressing concerns about the lack of transparency and political pressures to approve the permit. The comments focused on:

- *The project is being pushed through due to political pressure.*
- *Failures by DEQ to provide complete, accurate information in response to FOIA requests.*
- *Lack of transparency by DEQ breached the public trust and rendered the opportunity for public participation meaningless.*

Staff Response:
The application review and permit processing for the proposed project has been conducted in accordance with the SWCL and the VWP Permit Program regulations. The law provides that anyone can apply for a permit, and the regulations establish the requirements an applicant must meet to obtain permit authorization and the process that DEQ must follow. Timeframes for specific actions that DEQ and/or the Board must take in processing an application are dictated in the law and regulations.

Since the announcement of the proposed project, DEQ has received 37 FOIA requests regarding the proposed project, with 28 of those occurring in the last 6 months. In the majority of cases, the agency produced records to all requesters within the 5 working days without incident. However, there were some isolated situations regarding the release of records for proposed project, in which the agency did not provide all the responsive documents within the 5 working days (i.e. record in junk mail, unaware custodian possessed responsive records, etc.). In every instance when the situation was brought to the agency's attention, the agency rectified the matter within a day of being notified of the issue.

22. Staff received comments outside of the authority of the VWP Permit Program authority.

- *DEQ and the USACE should review whether destruction of the wetlands creates Hanover County a transition zone making it more susceptible to tornadoes.*
- *DEQ should consider the number of residents who live within one square mile of each site.*
- *Concerns about the metal building and empty trailers during high wind weather events.*

Staff Response:
The concerns listed above are outside the authority of the VWP Permit Program.

23. Compliance

Staff received comments expressing that there is no audit of the wetlands once permitted, and the applicant will have carte blanche to destroy all wetlands found on the 217 acre site.

Staff Response:
DEQ conducts periodic inspections of sites with active VWP permits to evaluate compliance with conditions of the permit. Inspections focus on such things as ensuring compensatory mitigation credits have been purchased prior to the permittee taking impacts, evaluating whether impacts taken are within the permitted areas, evaluating if remaining surface waters have been secondarily impacted from sedimentation or reduction in hydrology, ensuring appropriate wetland boundary flagging is in place, and other review of site activities relative to other conditions of the permit. Additionally, once construction activities are complete, DEQ conducts a final permit termination inspection to ensure that all permanent impacts are within the permitted limits and are not greater than the approved impacts, avoided surface waters have not been impacted, temporary impacts have been restored, and areas surrounding surface waters have been stabilized to prevent future sedimentation. If during any inspection DEQ finds that the permittee may be in violation of the SWCL, VWP Permit Program regulations, or permit conditions, the agency has the authority to require corrective action. Depending on the severity of the infraction, the permittee may be referred to DEQ's Enforcement Division where the permittee may be subject to a Consent Order that may include injunctive actions and/or civil charges.

24. Request to deny permit

The majority of comments requested denial of the permit. The requests for denial were largely the result of all the concerns summarized in this document. In addition, the following comments specific to the scope of the project were received:

- *DEQ has taken biased position in favor of the applicant which is in conflict with DEQ's mission to protect and enhance Virginia's environment, and to promote the health and well-being of the citizens of the Commonwealth.*
- *This will result in the largest destruction of wetlands in the state of Virginia outside of the Greater Hampton Roads/Virginia Beach area.*
- *Approving the project sets a precedent and shows businesses that they can use loopholes to skirt the intentions of regulations that were put in place to protect the environment.*
- *The project is not in the public interest.*
- *Virginia should measure and conserve wetlands.*

- *This is not the right place for this monstrous facility because the site is surrounded by homes and wetlands.*
- *The proposed location is environmentally, culturally, and historically significant to the area.*
- *The uncertain economic climate poses the significant risk that this site be environmentally destroyed, but not ultimately developed.*

Staff Response:
Section 10.1-1183 of the Code of Virginia states that "It is the policy of the Department of Environmental Quality to protect and enhance the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens, residents, and visitors in accordance with applicable laws and regulations." DEQ staff recognizes that the proposed draft permit authorizes large wetland impacts relative to the average VWP permit and that citizens have expressed significant opposition to the proposed siting of this project; however, the VWP Permit Program regulations do not provide authority for staff to propose denial of a permit because the proposed impacts are larger than other permits or for any reason not provided in the SWCL and VWP Permit Program regulations. Staff reviewed and considered all the comments received during the application review process. In response to comments, staff requested additional information from the applicant, which in some cases, such as the surface waters determination, resulted in significant changes to the permit. Staff's authority is limited to reviewing the application in accordance with the SWCL and VWP Permit Program regulations.